No. 89-5120

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

MICHAEL OWEN PERRY

Petitioner,

v.

LOUISIANA

Respondent.

On Writ Of Certiorari To The
Supreme Court Of Louisiana

JOINT APPENDIX

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State of Louisiana* v. *Michael Owen Perry
502 So.2d 543 (La. 1986)

Supreme Court of Louisiana

STATE of Louisiana

v.

Michael Owen PERRY.

No. 86 KA 0460.

Nov. 24, 1986.

Rehearing Denied March 12, 1987.

COLE, Justice*

Michael Owen Perry was indicted on five counts of first degree murder, in violation of La.R.S. 14:30. After deliberation during the guilt phase of his trial, the twelve person jury unanimously concluded defendant was guilty as charged on all five counts. Following the presentation of evidence during the sentencing portion of the trial, the jury unanimously recommended defendant be sentenced to death on each count. The jury found the same two aggravating circumstances existed for each crime: the offender knowingly created a risk of death or great bodily harm to more than one person; and the offense was committed in an especially heinous, atrocious, or cruel man-

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*Pike Hall, Jr. Associate Justice pro tempore, in place of Mr. Justice Lemmon.

ner. The trial judge subsequently imposed the death sentence.

Defendant on appeal relies on six assignments of error. The first three assignments of error concern statements made by defendant to various persons which the trial court ruled were admissible. Assignment of Error Number One contends the trial court erred in allowing the introduction of a statement given to Deputy Herbert L. Durkes, Jr. on September 15, 1983, while defendant was incarcerated at the Jefferson Davis Parish jail. In Assignment of Error Number Two, defendant argues the trial court should not have permitted the introduction of the testimony of his aunt, Zula Lyon, regarding statements defendant made to her. Assignment of Error Number Three involves the introduction of testimony of Deputy Ervin Trahan as it relates to a statement made by defendant while being transported by Trahan and Sheriff Dallas Cormier to the Feliciana Forensic Facility for psychiatric evaluation.

Defendant in the Fourth Assignment of Error complains of the admission into evidence of the objects seized at the two crime scenes, arguing their admission violates his Fourth Amendment right to be protected from warrantless searches and seizures. In Assignment of Error Number Five, defendant alleges the trial court erred in allowing the State to introduce numerous color photographs of the five homicide victims. The final assignment of error contends the trial judge erred in failing to grant defendant's motion for a mistrial following a state witness's reference to defendant's theft of a radio.

We have added two issues not specifically addressed by counsel in brief to ensure full review, noting they were raised during oral argument. These issues are the finding

of the sanity commission hearings and defendant's withdrawal of the dual plea of "not guilty and not guilty by reason of insanity."

We therefore treat in this opinion the six assignments of error, the additional issues, and we also review the sentence. Because we find no error in the trial court proceedings and find the conviction and sentence to be valid under the law, we affirm.

FACTS

The victims in this case were all related to defendant: two were his cousins, Randy Perry and Bryan LeBlanc; two were his parents, Grace and Chester Perry; and the fifth victim was defendant's two-year-old nephew, Anthony Bonin. They were shot in separate households located only two doors away from each other. The cousins died first in the residence located at 639 Louisiana Street in Lake Arthur, Louisiana. Defendant's parents and nephew died next, inside the Perry's home at 810 Seventh Street. The circumstantial evidence from which these facts were derived was presented by the prosecution through the testimony of a number of witnesses. Other information was obtained from a statement defendant gave to Deputy Herbert Durkes while defendant was incarcerated.

On July 17, 1983 defendant apparently entered the unlocked house on Louisiana Street in the early morning. He walked first to the living room couch where Randy Perry lay asleep. From a short distance of only a few feet, he fired into the left eye of his cousin. The accused then entered the bedroom where Bryan LeBlanc slept, and again fired the gun at the victim's head.

It appears defendant then walked across the yard to his parents' home at 810 Seventh Street and broke into the

house. He listened to music for a while, awaiting his parents' arrival home from an out of town trip. His parents, on their return home, stopped to pick up the two-year-old, Anthony Bonin, whom they cared for when his father worked offshore.

At about the time the parents arrived home, several people in the vicinity heard loud noises or gunshots. In the statement defendant gave to Deputy Durkes admitting to the five murders, defendant indicated his father came through the door first, followed by the child and the mother. According to this statement, he shot his father first, then his mother, and then the child. There appeared to be some struggle with his father, whose body was found crouching behind the television in the living room. Because his first attempt did not kill either of his parents, he shot both of them a second time in the head. Not being sure the child was dead, he shot him a second time also. After dragging his mother's body away from the door so he could close it, he took his father's billfold containing $3,000 cash, and a strongbox belonging to his mother. He left the scene in his father's car.

The caretaker of the 639 Louisiana Street residence, Ernest Ashford, discovered the bodies of Randy Perry and Bryan LeBlanc shortly after 5:00 P.M. on July 19, 1983. The caretaker was the son-in-law of the owner of the house and the stepfather of Bryan LeBlanc. Ashford had a key to the house, and had entered the house out of concern for the diabetic Perry. Ashford notified police, who later entered the residence of Grace and Chester Perry and discovered the bodies of the other three victims.

Defendant became a suspect because of the bad relationship he had with his parents. Defendant lived in a trailer behind their home and was not allowed to enter

their home without their permission. Zula Lyon, defendant's aunt, testified in the guilt phase of the trial that defendant's motive for the killings was to obtain insurance proceeds from his parents' policies. Another possible motive was the fact defendant's parents had taken him to a mental hospital in Galveston for examination when he was sixteen and had him committed to the Central State Hospital at Pineville two years later. According to testimony, he was infuriated at his parents for committing him and had consequently threatened to kill them. Interrogated as to why he killed the victims, Deputy Durkes gave this account of defendant's statement:

> Why did you kill all those people? The boys threw me out of my grandmother's house, stole money from me all the time, and harassed me constantly. My mother and father wouldn't leave me alone. They made me live in that little trailer behind their house by all those stinking dog pens. They took all my money all the time, wouldn't let me in their house when I wanted. I just couldn't take it anymore.
>
> I asked him why he killed the child. The kid was evil, some sort of devil, witch of some sort. I asked—I'm sorry. I said that the child was too young to do him any harm or even talk, so why kill him? He was a very smart kid, he said, too smart for his age. I had to make sure he was dead.

Defendant arrived in Washington, D.C. on July 18, 1983, the day after the murders were committed. He checked into the Annex Hotel. While there, he paid rent in advance for his room, giving the clerk five one hundred dollar bills. He also bought numerous items from a television store, which were loaded by a clerk into a car matching the description of that owned by his father. On July 31, 1983 defendant had an encounter with another guest at the Annex Hotel which led to the police being called. An

officer ran a routine check on defendant and learned he was wanted in Louisiana for five counts of homicide. At the time of his arrest he had in his possession $1,100 cash and a hotel key. Following his arrest, the Washington police obtained a search warrant for his hotel room. Among the evidence recovered was one of the recently purchased television sets, with the names of the five victims written on the side. The vehicle driven by Chester and Grace Perry on their trip was recovered approximately one week later in a Washington, D.C. police impoundment lot where it had been towed for being parked in a no parking zone.

Following his transport back to Louisiana defendant was indicted on five counts of first degree murder. Defendant initially entered the dual plea of "not guilty and not guilty by reason of insanity" to each charge. A sanity hearing was held to determine his competency to stand trial, and the judge ordered he be sent to Feliciana Forensic Facility for further psychiatric evaluation. Subsequent to his return from this evaluation, another sanity hearing was held. At the close of this hearing defendant was allowed to withdraw his dual plea and enter the single plea of "not guilty," against the advice of counsel.

The issue of defendant's sanity is material to assignment of errors one and three, and is also relevant in the determination of whether or not defendant should have been permitted to withdraw the dual plea initially entered and replace it with a plea of "not guilty." Even though not included in the assignment of errors, we address the finding of the sanity commission hearings and the withdrawal of the dual plea because of their overall importance and effect on other assigned errors, and because we deem it imperative to afford a defendant assessed the death

penalty a review of all issues raised in his behalf regardless of whether formally asserted.

DETERMINATION OF COMPETENCY

Defendant was the subject of two sanity commission hearings, the first on September 26, 1983 and the second on March 1, 1985. The first commission was composed of Dr. Louis E. Shirley, Jr., a general practitioner with some capacity to treat psychiatric disorders, and Dr. Young Hee Kang, a general practitioner who completed a residency in psychiatry. After brief interviews with the defendant in the parish jail on September 26, 1983, both were of the opinion he needed further psychiatric evaluation. They summarized their findings:

> We find that he has a long history of paranoid schizophrenia and at this time is not in complete contact with reality and may be dangerous to himself and others. We were not able to ascertain his mental state at the time of the alleged offense(s). We feel that he needs complete psychiatric evaluation and therapy at this time.

As a result of this hearing the defendant was sent to the Feliciana Forensic Facility, for evaluation and treatment. The record does not reflect when the defendant was returned to Jefferson Davis Parish, but defendant was apparently returned in March of 1984.

Upon motion of the State, the second sanity commission was appointed. This commission was composed of the same two physicians who were on the first commission, plus an additional physician who specializes in psychiatry, Dr. Aretta J. Rathmell.

At this second commission hearing, the three physicians unanimously agreed defendant was mentally competent and could assist his counsel in his defense. The trial

court agreed, finding the evidence clear, and ruled accordingly.

It is fundamental to our adversary system of justice that a defendant who lacks the capacity to understand the proceedings against him or to assist counsel in preparing a defense may not be subjected to trial. La.C.Cr.P. art. 641; *Drope v. Missouri*, 420 U.S. 162, 95 S.Ct. 896, 43 L.Ed.2d 103 (1975). This Court in *State v. Bennett*, 345 So.2d 1129 (La.1977), set forth the appropriate considerations which a trial judge must use in the determination of competency:

> Appropriate considerations in determining whether the accused is fully aware of the nature of the proceedings include: whether he understands the nature of the charge and can appreciate its seriousness; whether he understands what defenses are available; whether he can distinguish a guilty plea from a not guilty plea and understand the consequences of each; whether he has an awareness of his legal rights; and whether he understands the range of possible verdicts and the consequences of conviction. Facts to consider in determining an accused's ability to assist in his defense include: whether he is able to recall and relate facts pertaining to his actions and whereabouts at certain times; whether he is able to assist counsel in locating and examining relevant witnesses; whether he is able to maintain a consistent defense; whether he is able to listen to the testimony of witnesses and inform his lawyer of any distortions or misstatements; whether he has the ability to make simple decisions in response to well-explained alternatives; whether, if necessary to defense strategy, he is capable of testifying in his own defense; and to what extent, if any, his mental condition is apt to deteriorate under the stress of trial. *Bennett*, supra, at 1138.

It appears the examining physicians and court abided by these criteria. Dr. Rathmell, the psychiatrist, and the

first of the three doctors on the commission to testify at the second sanity commission hearing, in particular paid attention to the criteria. She read from her report, which followed almost verbatim the factors set forth in *Bennett*, and concluded defendant was presently sane and able to proceed with trial. Her opinion was based on two ninety minute interviews with defendant, and evaluation of medical reports from the two State hospitals to which defendant had been committed. Some of these reports came from Feliciana Forensic Facility, and were the result of months of observation. She noted the records compiled by the psychiatrists at Central State Hospital at Pineville diagnosed the accused as having a paranoid illness, which she indicated is more of a character trait of state of mind than is the more serious schizophrenia illness. She characterized schizophrenia as a more incapacitating thinking disorder. She believed defendant has periodically had severe psychiatric problems, but agreed with the earlier psychiatric diagnoses from Central State Hospital. She found at the time of defendant's examination by her he was in remission of a paranoid illness. Though on cross-examination Dr. Rathmell admitted other hospital records characterized the defendant as having paranoid schizophrenia, she noted those words always appeared with the signature of non-medical personnel. Dr. Rathmell noted no psychiatrist had ever documented the diagnosis of acute paranoid schizophrenia.

Dr. Shirley did not include in his opinion of defendant's mental condition as many of the criteria from *Bennett* as did Dr. Rathmell. However, he still addressed several of them in his testimony during examination. Dr. Shirley was firm in his conclusion the defendant seemed to be able to assist his counsel at trial, to be aware of the charges against him, and to be able to help in his defense. Dr.

Kang, like Dr. Shirley, also did not include all of the criteria, but was of the opinion he could assist his counsel, understand the trial he was facing, and understand the consequences of possible conviction.

It should be noted additional support for the finding of competency is evident in the testimony of Dr. Theresa Jiminez, who testified during the penalty phase of defendant's trial. Dr. Jiminez is a certified psychiatrist, and was employed as clinical director at Feliciana Forensic Facility during the time defendant was being evaluated there under court order. Her duties included determining whether or not patients were mentally ill. She testified there are two types of mental illnesses: schizophrenia, which is a major mental illness, and those illnesses that constitute personality disorders. She classified defendant as having a personality disorder, of an anti-social type. She also indicated defendant is smart enough to act in a crazy manner if he feels he needs to do so. Further, she stated if a person is suffering acutely from a major mental illness, as opposed to a personality disorder, he would not have the capacity to plan and reason out his acts as was necessary for the crimes involved here. He would not be able to think logically, lay in wait for someone to come home, plan a murder, hide evidence, or know to flee from town.

A comparison of the length of examinations and credentials of Drs. Rathmell and Jiminez, as opposed to Drs. Shirley and Kang, is significant in weighing the opinions of each as to credibility. Drs. Shirley and Kang had both earlier diagnosed defendant as being paranoid schizophrenic. Dr. Rathmell spent approximately three times as long with defendant as did Drs. Shirley and Kang; Dr. Jiminez had the benefit of months of her own personal observation and reports of other staffers while the

accused was a patient from October 1983 to March 1984. Both Drs. Rathmell and Jiminez are psychiatrists; neither Dr. Shirley or Dr. Kang is a psychiatrist. Dr. Shirley himself, during his testimony, indicated a willingness to defer to the greater experience and expertise of Dr. Rathmell.

The defendant has the burden of establishing incapacity, because Louisiana law presumes the defendant is sane and responsible for his actions. La.R.S. 15:432. The defense must prove by a clear preponderance of the evidence the defendant is incompetent to stand trial as a result of a mental disease or defect. La.C.Cr.P. art. 641; *State v. Machon*, 410 So.2d 1065 (La. 1982). While a court is permitted to receive the aid of expert medical testimony on the issue, the ultimate decision of competency is the court's alone. La.C.Cr.P. art. 647; *State v. Rogers*, 419 So.2d 840 (La.1982). A trial court's determination of the mental capacity of a defendant is entitled to great weight, and his ruling will not be disturbed in the absence of manifest error. *State v. Morris*, 340 So.2d 195 (La. 1976).

The weight of the evidence supports the trial court's determination of competency. The expert witnesses in the sanity commission hearing at which competency was found were examined thoroughly by both persecution and defense. The three examining physicians were unanimous in their conclusion the defendant was able to proceed with trial. It is true there were some diagnoses of defendant as having paranoid schizophrenia, made by non-psychiatrists. However, the weight of the evidence, in terms of both the duration of the interviews and expertise, supports the finding of either a personality disorder or paranoid illness, as opposed to the more disabling thinking disorder of schizophrenia. In light of this evaluation of expert testimony, we cannot find the trial court's deter-

mination of defendant's competency to be clearly erroneous.

WITHDRAWAL OF DUAL PLEA

The issue of withdrawal by defendant of the dual plea was considered by the trial judge immediately following the sanity hearing. Though the change of plea was not included in the assignment of errors, we address this issue because of its importance in assuring complete review and because it was raised during oral argument.

During the interval between the appointment of the second sanity commission and the hearing on March 1, 1985, the trial court received correspondence from the defendant. In this correspondence the defendant informed the court of his desire to withdraw his dual plea of "not guilty and not guilty by reason of insanity" and enter the single plea of "not guilty." The attorneys were notified of defendant's wish and of the court's intention to consider this request if the defendant was found mentally competent at the sanity hearing.

Following the finding of competency, the defendant was informed the court was aware of his desire to withdraw his dual plea on all five counts and replace it with the single plea. He told the court emphatically he wanted to change the plea. The trial judge questioned the defendant about his education, learning he had completed 13 college hours of credit in general studies. The judge clarified and explained thoroughly what the plea of "not guilty and not guilty by reason of insanity" meant. Defendant related he and his attorneys had spoken at length about the change in plea, and in response to the judge's question, he again expressed his desire to withdraw the dual plea. Out of an abundance of caution, the judge called a recess for the express purpose of providing defendant a final con-

sultation with his attorneys, and specifically instructed defendant to listen to his attorneys. After a forty minute recess, the defendant had not changed his mind and still wanted to change his plea. Over the objection of his counsel, the court permitted defendant to withdraw his dual plea and enter a plea of "not guilty," relying on the holding of *State v. Clark*, 305 So.2d 457 (La.1974). The relevant portion of *Clark*, *supra*, provides as follows:

> This Court cannot approve the trial court's action in requiring the defendant to maintain such an untenable position when he desires to withdraw the insanity portion of the dual plea unless there is some overriding rationale for refusing a defense request to withdraw such a plea. The reason for La.C.Cr.P. art. 561's specific time limits within which a defendant may of right change a simple "not guilty" plea to the dual insanity plea is to give the State adequate notice of defendant's intention to advance the insanity defense and adequate time to prepare in the face of such a defense. See Official Revision Comment to La.C.Cr.P. art. 561. No such rationale is applicable in the reverse situation. When defendant seeks to withdraw the insanity portion of a dual plea and stand on a simple "not guilty" plea, no prejudice to the prosecution results. However, denial of a request for permission to withdraw the dual plea results in substantial prejudice to the defendant in a criminal prosecution. The defendant may withdraw the dual plea and substitute the single plea of "not guilty" at any time prior to the presentment of the indictment and defendant's responsive plea to the jury. *Clark*, at 463.

It is true the instant case is distinguishable from *Clark*, as it does not appear in *Clark* the plea was withdrawn over counsel's objection. However, this Court has recently dealt with this specific issue in the capital case of *State v. Lowenfield*, 495 So.2d 1245 (La.1985), where the accused also wished to withdraw his plea of insanity against his attorney's advice. The Court stated the following:

> It appears beyond argument that when a competent defendant wishes to plead not guilty rather than not guilty by reason of insanity, and clearly understands the consequences of his choice, then the counsel must acquiesce to the wishes of his competent client. The court had no choice but to allow the defendant to withdraw his pleas and in this we find no error. . . . *Lowenfield*, at p. 1252.

We consequently find the trial court ruling permitting defendant to withdraw his plea is correct.

ASSIGNMENT OF ERROR NO. ONE

Defendant's first assignment of error challenges the admissibility of a statement he made on September 15, 1983 to Herbert L. Durkes, Jr., a jailer at the Jefferson Davis Parish jail during the time defendant was incarcerated there. Defendant argues primarily his mental state at that time prevented him from giving a free and voluntary statement.

In the early morning hours of September 15, 1983, defendant informed Durkes he wanted to confess. Durkes told defendant he would call Detective Ervin Trahan or Chief Deputy Ted Gary to hear his confession, but defendant said he did not want to talk to them because they did not want to listen to him. Durkes therefore secured the presence of Robert Lee, the other jailer on duty, and of Daniel Peer, a trustee. Peer stood out of defendant's line of vision, along the wall beside the door to defendant's cell. Durkes and Lee squatted down so they could listen at the opening in the steel cell door through which food is placed into the cell. From that position they could see defendant's face and shoulders. Durkes read defendant his *Miranda* rights and asked if he understood them, to which defendant responded yes. He asked defendant if he wanted a lawyer present and defendant said he did not.

Durkes listened as defendant confessed and subsequently went to his desk and wrote down the account. Lee and Peer read the written statement and agreed it matched what defendant had said. Durkes took the handwritten statement to a typist who then typed it.

Before the State can introduce what purports to be a confession, it must affirmatively show it was made freely and voluntarily, and not under the influence of fear, duress, intimidation, menaces, threats, inducements, or promises. La.R.S. 15:451. In addition, if the statement was made during custodial interrogation, the State bears the burden of showing defendant received and waived his *Miranda* rights. *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966); *State v. Nelson*, 459 So.2d 510 (La.1984).

At both the hearing on the motion to suppress and at trial, Durkes indicated he did not promise anything to defendant, did not threaten or intimidate him, coerce him or place any physical or mental duress upon him. Durkes described defendant as alert during the giving of the statement and stated he had defendant's full attention. Defendant made eye contact with Durkes and was responsive.

Furthermore, the record clearly demonstrates Durkes read defendant his *Miranda* rights and defendant does not contend otherwise. Rather, defendant's attack on the admission of the confession focuses upon whether the statement was freely and voluntarily made, considering his mental condition at the time he gave it. He relies heavily on his having been diagnosed as paranoid schizophrenic a short time before giving the statement and was soon to be sent to Feliciana Forensic Facility. In order to assess the merit of this argument, it is necessary to

review the testimony from the September 26, 1983 sanity commission hearing held shortly after the statement was given, as well as from the August 21, 1985 hearing on the motion to suppress where the statement was ruled admissible.

As earlier indicated, on September 26, 1983, Drs. Shirley and Kang examined defendant and testified at a sanity hearing held that same day. They concluded he was paranoid schizophrenic, and we have previously disregarded this finding in favor of the diagnoses provided by the more experienced psychiatrists. However, while defendant contends the characterization of paranoid schizophrenia by Drs. Shirley and Kang should result in his statement being excluded, we find much in their testimony which supports a finding it was made freely and voluntarily.

Dr. Shirley stated he found defendant well-oriented to time and place, and very up-to-date on current events. The doctor characterized him as very aware of what was going on around him, but determined defendant did have some "flights of fancy" during the examination in which he lost contact with reality. These "flights of fancy" did not occur all the time and resulted when certain subjects were brought up by the use of trigger words.[1]

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[1]As stated by Dr. Kang in the second sanity commission and the motion to suppress hearings, trigger words were used in examining the defendant to determine his reaction to subjects that had previously resulted in psychotic behavior on his part. This defendant reacts visibly to the words "Olivia Newton-John." The mention of those words has caused him, after previously exhibiting no psychotic manifestations during an interview, to behave in a deviant manner. He would start rambling, become aggressive and hostile, and talk endlessly. In this way he evidences his loss of touch with reality.

Dr. Kang, in her testimony, concurred in Dr. Shirley's finding of defendant's "flights of fancy" being triggered by certain topics. They both felt further evaluation was necessary, and neither could ascertain what his mental state was at the time the offense was committed due to defendant's lack of recall of that time period.

Both doctors also testified at the hearing on the motion to suppress held on August 21, 1985. They reiterated their earlier testimony concerning defendant's "flights of fancy" being triggered by certain words or subjects. Dr. Shirley also stated a person with paranoid schizophrenia would be in touch with reality much of the time. Dr. Kang supported this by stating defendant was "more or less" cognizant of what was going on around him until the trigger words were mentioned.

Defendant relies upon *State v. Glover*, 343 So.2d 118 (La.1977), for his contention that defendant's mental state precluded his confession from being free and voluntary. In *Glover, supra*, this Court ruled statements made by the defendant inadmissible because at the time he gave them it was probable he was actively psychotic and legally insane. It is true the defendant in *Glover*, like the defendant in this case, had been diagnosed as a paranoid schizophrenic. However, it should be noted Glover also was mentally retarded and suffered from organic brain damage.

Even were we to accept the characterization of the instant defendant as being paranoid schizophrenic, this should not automatically render his statements inadmissible. In *State v. West*, 408 So.2d 1302 (La.1982), this Court rejected defendant's argument that his paranoid schizophrenia made it impossible for him to give a voluntary statement, and ruled the admission of the challenged

statements into evidence was not erroneous. The Court distinguished West's condition from that of Glover, noting in particular Glover's organic brain damage in addition to his mental illness, as well as the fact Glover received a very potent anti-psychotic drug.

Defendant in this case appears to be more like West than Glover. He was not being medicated before he made the statement. There is no evidence he suffers from organic brain damage or is mentally retarded. To the contrary, when the trial judge questioned him in court to determine his understanding of the plea withdrawal issue, it was learned defendant had completed thirteen hours of college studies and left school because he fell behind. Drs. Shirley and Kang both stated defendant seemed in contact with reality until he heard the trigger words, and these words were not a part of the conversation between defendant and Durkes. The statement given does not indicate rambling or jumping from subject to subject. Durkes testified defendant was alert, responsive, made eye contact, and gave Durkes his full attention during the giving of the statement.

The determination of the admissibility of a confession is a question for the trial judge, and his conclusion will not be disturbed unless not supported by the record as a whole. *State v. Nuccio*, 454 So.2d 93 (La.1984). We conclude the trial judge did not err in ruling the statement was admissible. The evidence supports his finding defendant did not suffer from mental illness to the degree necessary to result in exclusion because of involuntariness. Thus, we find no merit in this assignment of error.

ASSIGNMENT OF ERROR NO. TWO

In this assignment of error defendant alleges the trial court erred in allowing the State to introduce the testi-

mony of Zula Lyon regarding statements defendant made to her. He contends Mrs. Lyon served as an agent for the sheriff's office and, as such, *Miranda* warnings should have been given. Zula Lyon is the defendant's aunt and his mother's sister.

The statements complained of were given on two of the ten to twelve occasions defendant was visited by Mrs. Lyon in 1983. On September 16, 1983, he told his aunt he remembered the murders and had killed five people. He wrote the victims' names down on a piece of paper he had in his cell. He also told her his father had $3,000 in his wallet, which he took. He related he used pistols and shotguns to kill the victims, and disposed of the weapons and some luggage in a canal.

On September 30, 1983, as Mrs. Lyon was preparing to leave after a visit with defendant, he again told her he killed the people. He added the judge did not want him to plead guilty because the case was too serious. He said he was guilty and repeated he had killed the people.

It is evident from Mrs. Lyon's testimony she had motives in visiting defendant other than to solicit information for the sheriff. While she admitted she had asked defendant questions about the murders on some of her visits, she specifically stated she had not questioned him on September 16, 1983. The purpose of her visit on that date was to bring winter clothing to defendant in preparation for his transfer to the Feliciana Forensic Facility. She also expressly stated she had never been asked to question defendant.

Similarly, the reason for her visit on September 30, 1983 was to visit him one more time before defendant left for Feliciana Forensic Facility, to see what his state of mind was and to see if he was in need of anything. It is

clear Mrs. Lyon did not question him on that date. According to her testimony, the statement on that date was volunteered by defendant as Mrs. Lyon was getting ready to leave.

Defendant alleges Mrs. Lyon received special treatment from the sheriff's office, implying this would not have been the case had she not been eliciting information with the intention of relaying it to the sheriff. While it is true on some of her visits to defendant Mrs. Lyon talked with him in the sheriff's office, her testimony also makes it clear she did on some occasions see him in his jail cell in solitary confinement. Also, although she admitted she talked with the deputies a number of times about the case, she maintained they never asked her what defendant had said to her.

From Mrs. Lyon's testimony, it does not appear she was acting on behalf of the sheriff's office when she visited defendant and talked with him about the crimes. In particular, it should be noted neither statement was the result of questioning by her and both statements were instead unsolicited, spontaneous confessions of guilt.

This Court has previously considered a similar situation in *State v. Loyd*, 425 So.2d 710 (La.1982). Loyd was given his *Miranda* rights and the defendant made incriminating statements after invoking his right to silence. These statements were elicited by defendant's mother who had been called by a deputy for the express purpose of obtaining information from the defendant. She spoke with him once, did not receive adequate information, and later in the morning sought permission to talk with him again. The sheriff consented and asked her to try to extract information regarding the whereabouts of the missing child. After she talked with her son, a family

friend also talked with him. Then defendant's mother had another conversation with him. Before this conversation the sheriff requested that she ask her son if he would talk with the deputies.

Loyd challenged the admissibility of incriminating statements made to his mother, asserting they were not admissible because they came after he had exercised his right to cut off questioning. The Court held otherwise, reasoning the questioning by defendant's mother occurred out of the officers' presence. It noted police efforts to elicit incriminating statements from him did not constitute custodial interrogation within the meaning of *Miranda*, unless a person realizes he is dealing with the police. The Court specifically stated the mother "was not a police officer or agent. . . ." *Loyd* at 717. The Court continued with the following:

> Consequently, in the absence of any interplay between police custody and police interrogation, the mere fact that the defendant was in custody was not so intimidating, nor his mother's questioning so menacing, as to bring *Miranda* into play. *Loyd* at 717.

The Court in *Loyd* relied on its earlier decision in *State v. Rebstock*, 418 So.2d 1306 (La.1982), where the sixteen-year-old charged with commission of the crime challenged the admissibility of an inculpatory statement made to his father before being advised of his *Miranda* rights. The Court ruled the statement was admissible, despite the argument by defendant the father acted as an agent of the police and thus violated his constitutional rights. The Court said the father voluntarily undertook to question his son, and their brief conversation was not an extension of police interrogation. It noted the compulsion conceptualized in *Miranda* as resulting from interrogation was not present. Finding the defendant and his father had

a short private conversation, out of the presence of the police, the Court ruled the defendant was not subjected to interrogation as defined in *Miranda*.

After reviewing the circumstances under which the statements were given and the applicable case law, we find no error in their admission by the lower court. This is especially required after comparing the instant situation to the more compelling facts in *Loyd*, in which this Court refused to exclude the statements given by the defendant to his mother. We find Mrs. Lyon was not acting as an agent for the sheriff. She did not question him on the two dates he gave the unsolicited confessions. Both statements were made when no police were present, so they were not the product of custodial interrogations. We particularly note the first of the statements came the day after defendant had confessed to Durkes. Apparently defendant was simply ready to confess. We accordingly find no merit in this assignment.

ASSIGNMENT OF ERROR NO. THREE

Defendant complains in his third assignment of error of yet another statement admitted into evidence against him. He made this statement while enroute to the Feliciana Forensic Facility.

Sheriff Dallas Cormier and Deputy Ervin Trahan transported defendant on this trip. Sheriff Cormier had invited defendant's counsel to accompany them, but counsel declined stating he was too busy. While enroute, defendant began spontaneously talking about the case. Neither the sheriff nor deputy questioned defendant or initiated conversation about the five counts against him. Rather Sheriff Cormier told defendant not to say anything because they did not want to talk about the case without his attorney present. Defendant nevertheless

continued, on his own volition, to talk. Several times he asked Deputy Trahan if they had found the guns used in the homicides. Trahan eventually replied they had not. Defendant then explained where the weapons could be found. During the trip defendant also spoke about his family members who had been killed, and wondered about the judge handling the case, inquiring as to whether he had sentenced anyone to the electric chair.

Defendant contends the statement regarding the location of the guns should not be admissible because the doctors had already diagnosed him as paranoid schizophrenic, referring the Court to his first assignment of error. As discussed above, we have earlier disregarded this testimony. However, even were we to agree with this medical conclusion, the diagnosing doctors testified defendant lost contact with reality when the trigger words, Olivia Newton-John, were used. Otherwise, defendant remained in contact with reality. We note Deputy Trahan testified those trigger words were not brought up during the trip to Feliciana.

Nonetheless, the circumstances in which this statement was given differ from those of the statement challenged in the earlier assignment of error. Both the sheriff and deputy testified defendant talked throughout the entirety of the trip, and said he changed subjects frequently. This might suggest defendant's mental state was less stable than it was when he spoke with Durkes. However, in rebuttal to that possible conclusion is the fact defendant always returned to and primarily wanted to talk about the subject of the murders. He also did not change topics to the extent he would change them in midsentence. Sheriff Cormier testified defendant was awake and remained alert during the trip. These facts indicate to us defendant was in contact with reality during the trip

and wanted to convey the information regarding the location of the guns to the sheriff and deputy. Moreover, the accuracy of the statements was borne out when the police recovered the guns from the drainage canal defendant had suggested they search. As the State argues in brief, this shows defendant was in touch with reality when he made the statements. We find the trial judge correct in ruling the statement should not be excluded because of defendant's mental condition.

Defendant raises another objection to the admissibility of this statement, relying on La.R.S. 15:450. He argues the statement should not be admitted because it was only part of the conversation which took place during the trip to the Feliciana Forensic Facility. La.R.S. 15:450 mandates the following:

> Every confession, admission or declaration sought to be used against any one must be used in its entirety, so that the person to be affected thereby may have the benefit of any exculpation or explanation that the whole statement may afford.

In brief defendant objects in particular on the ground that admitting only part of the confession prevented him from showing the true state of defendant's mind, how defendant changed from topic to topic during the course of his statement and how defendant was or was not in touch with reality. He contends the only portion of the statement admitted was that part beneficial to the prosecution.

A reading of the transcript reveals defense counsel did not object to the statement on the basis of La.R.S. 15:450 during direct examination. It was not until defense counsel had cross-examined Deputy Trahan rather extensively that he objected. Under these circumstances, it appears objection came to late.

Furthermore, both defense counsel and the prosecution questioned Deputy Trahan thoroughly about defendant's conversation and did elicit information in addition to that concerning the location of the guns. Trahan indicated defendant "rattled on" about a number of subjects, including whether the trial judge had ever sent anyone to the electric chair and the fact he had thrown a strong box containing a check over a bridge while going to Baton Rouge.

Finally, even if the whole statement was not admitted into evidence, this Court has treated a similar situation in *State v. Marmillion*, 339 So.2d 788 (La.1976). It found the following:

> Nevertheless, in the absence of proof to the contrary, the fact that the purported statement of the accused as testified to by the investigating officer does not consist of a verbatim reiteration of the conversation between them, due to the witness' inability to recall or other valid explanation, the rights of the accused under Section 450 are not violated. The law does not require the production of nonexistent portions of the confession or portions which cannot be recalled. *Marmillion, supra*, at 793.

We find this assignment seeking exclusion of defendant's statement during transport to be without merit.

ASSIGNMENT OF ERROR NO. FOUR

The defendant seeks by this assigned error to suppress all evidence seized at the two murder scenes on the day or days following discovery of the bodies. He contends the admission of this crime scene evidence violates his right and the public's right to be protected from warrantless searches and seizures.

There is no dispute the officers had a right to make warrantless entries of the two murder scenes on the reasonable belief persons within might be in need of immediate aid, to see if there were other victims and to determine if the perpetrator of the crimes was still on the premises. *Mincey v. Arizona*, 437 U.S. 385, 392, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978). The sheriff's office secured both crime scenes until the next day and re-entered on July 20, 1983 to conduct an investigatory search, collecting evidence and removing items which required laboratory analysis. These subsequent searches of the murder scenes were warrantless although, as the State concedes, there was time to obtain a search warrant for the murder scenes. In fact a warrant was obtained to enter and search the trailer which the defendant occupied. Defendant had a privacy and proprietary interest in his deceased parent's house, he argues. Moreover, defendant argues the public has an interest in preventing the admission of evidence from an illegal search. (The argument of the public's right against warrantless search and seizure was raised in brief and oral argument, but no authority was given.)

Defendant relies upon *Thompson v. Louisiana*, 469 U.S. 17, 105 S.Ct. 409, 83 L.Ed.2d 246 (1984), which he cites for one proposition: there is no murder scene exception, therefore, a warrantless search is not constitutionally acceptable simply because a homicide has recently occurred there. *Thompson v. Louisiana* overturned this Court's opinion, *State v. Thompson*, 448 So.2d 666 (La.1984), which held a warrantless search of defendant's home was valid when defendant had a diminished expectation of privacy in her home because she called for aid after murdering her husband, and because her daughter, called by her mother, let the police in on her apparent authority over the premises.

The U.S. Supreme Court held the opinion was indistinguishable from and conflicting with *Mincey v. Arizona*, *supra*. Thompson was tried for the murder of her husband. Deputies were summoned to the house by defendant's daughter, who reported a homicide. The daughter said the defendant shot her husband, attempted suicide by ingesting pills, but then called her daughter, told her of her acts and asked for help. The daughter called police and went to her parents' house, admitting the deputies. The deputies found the defendant unconscious and her husband dead of a gunshot wound. Defendant was transported to the hospital. Homicide investigators arrived thirty-five minutes later, entered the premises and searched the scene for two hours, locating incriminating evidence of the murder and attempted suicide.

The Supreme Court held the two-hour general search of defendant's house was a significant intrusion on her privacy and was invalid without a warrant. Discovery of the evidence did not occur in the initial sweep of the house for victims or the killer, or in the plain view exception in the initial entry. Defendant's call for help did not convert her home into a public place where no warrant is required. The Supreme Court in *Thompson* reaffirmed the rule that "searches, conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment, subject only to a few specifically established and well delineated exceptions." Consent is one of the exceptions to the warrant requirement.

The State contends police lawfully entered the murder scene at 639 Louisiana Street upon the consent of Paul "Blue" Perry and Edward Ashford. Three men resided at this house: Paul "Blue" Perry and the victims Randall Perry and Bryan LeBlanc. Ashford was the caretaker for

this house and his stepson, Bryan LeBlanc, lived there. Ashford's wife was concerned about Bryan, a diabetic, and Ashford went to the house about 5 P.M. on July 19, 1983, at her urging. He found the doors locked and could not get an answer from within. The front door fell off its hinges as he knocked on it. He walked in and discovered the bodies. After Ashford sought police help, he met the police chief at the house and told him to go inside. After other officers arrived, two officers walked to the Perry residence two doors away and saw on the carport floor pieces of flesh, skull and bone marrow. They then entered the second murder scene, at 810 Seventh Street.

The State argues it had the initial consent of Ashford, the caretaker, to enter 639 Louisiana Street. The only surviving resident of the house at 639 Louisiana was Paul "Blue" Perry, who was working on an offshore oil rig at the time of the murders. Chief Deputy Ted Gary said he spoke to "Blue" Perry and obtained consent for the continuing searches of his house. Perry was returned to Lake Arthur after the bodies were discovered. Gary recalled talking to Blue Perry before re-entering the house. In addition, the State argues, Ashford was sufficiently related to the house to give consent. Ashford was the caretaker, had a key to the house, and had ongoing permission to enter the house whenever he deemed it necessary.

There is no showing that defendant possessed any privacy interest at 639 Louisiana Street. He did not reside there and had no property there. Neither Ashford nor Blue Perry withdrew the consents to search the house. Both had sufficient interest in the house to give valid consent to enter for all the searches. We uphold the warrantless searches of 639 Louisiana Street as lawful consent searches.

Defendant also objects to the evidence seized at 810 Seventh Street, where his parents lived. The bodies of his parents and two-year-old Anthony Bonin were found inside, when deputies entered after finding the two bodies at 639 Louisiana Street and discovering pieces of skull, flesh and bone marrow in the carport outside 810 Seventh Street. Again, the initial entry was unequivocally lawful, since officers were searching for victims or suspects.

Michael Owen Perry did not reside at 810 Seventh Street at the time of the murders. He lived in a trailer behind his parents' home. There is ample evidence that defendant was not permitted in his parents' home without their permission. The doors were kept locked and Michael Owen Perry was not given a key. He had to knock to be admitted. There was no showing defendant had any of his property within his parents' home, or that he used it as an extension of his residence. Officers found evidence of forced entry into the house. Defendant's statement to the jailer admitted he broke into the house to wait for his parents. There is no proof defendant had a privacy interest at 810 Seventh Street. To the contrary, he could not enter the house of his own will and he had no property inside. This case is distinguishable from *Mincey* and *Thompson*, where in both cases the defendant's home was searched. There was no living person who had a privacy interest in the house at 810 Seventh Street. Therefore, the entries of the house were not in violation of anyone's privacy interest.

The Louisiana Constitution does not limit standing to challenge a search to those who live in the premises and thus have a reasonable expectation of privacy in it. La. Const. Art. I, § 5 provides in pertinent part. "*Any person* adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise its

illegality in the appropriate court." (Emphasis added.) This first part of the section states that every person has the right to "be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy." Thus, it seems that there must be an invasion of *someone's* rights to privacy before there can be an unreasonable search.

> It is well settled that the Fourth Amendment to the United States Constitution protects people, not places. It is the individual's reasonable expectation of privacy that our society values and the constitution protects. *Katz v. U.S.*, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967).
>
> *State v. Hines*, 323 So.2d 449, 450 (La.1975).

Michael Owen Perry was a resident of the trailer and the search of that residence was with a warrant. The evidence seized from the two murder scenes was properly admitted into evidence. There is no merit in this assignment.

ASSIGNMENT OF ERROR NO. FIVE

Defendant argues the trial court erred in allowing the State to present to the jurors numerous color photographs of the five homicide victims. He contends the photographs were not necessary for any probative purpose and inflamed the jury, overwhelming their reason. (We will discuss later in this opinion whether the use of the photographs introduced an arbitrary factor into the jury's sentencing recommendation.) The photographs were unnecessary, he argues, because the pathologist who performed the autopsies testified to the cause of death, the location and number of gunshot wounds, the type of weapon used and the approximate distance of the victim from the gun when fired. Sheriff's deputies testified in great detail to the location of the victims in the

house, the location of gunshot holes in the walls, the splatter of blood, tissue and brains; the deputies used drawings, cut outs and body figures to illustrate their testimony.

Defendant objected timely at trial to the admission of the photographs into evidence. The judge admitted the photographs in evidence, commenting, "I think the probative value will outweigh whatever prejudicial effect could happen. I realize, of course, that they are unpleasant pictures to look at but that's one of the situations that we, as well as jurors, have to face in a case of this kind . . . . It corroborates everything this doctor (the pathologist) was saying in the cause and effect and the other aspects, and I think that the corroboration in this matter is very important, so we're going to admit them."

The State introduced a total of 170 color photographs in evidence. The photos show the interior and exterior of the two houses, the condition of the house as it was found and photos of the houses after the victims were removed. There are eight photos taken at the pathologist's directions before he began autopsies. The total also includes four portraits of the victims as they appeared in life. The great majority of the photographs are a painstaking photographic tour through the two houses, with officers taking pictures of all conceivably relevant evidence. Of the 158 photos taken at the two murder scenes, 23 show one or more of the victims.

The photographs of the remains of five murdered persons can not be less than gruesome. The pictures are unpleasant. All the victims were struck in the head with blasts from a shotgun fired at close range, sometimes at point-blank range. Many of the photographs show the destruction of the skulls, particularly the photographs

taken prior to autopsy. No amount of testimony or the use of diagrams can depict the murders with such effect as the photographs.

The defendant cannot force the State to use drawings or other evidence instead of photographs. The defendant cannot deprive the State of the moral force of its case by offering to stipulate to what is shown in photographs. *State v. Watson*, 449 So.2d 1321 (La.1984); *State v. Lindsey*, 440 So.2d 466 (La.1981). The court's admission of allegedly gruesome photographs will be overturned on appeal only if the prejudicial effect of the photographs clearly outweighs their probative value. *State v. Watson*, supra; *State v. Boyer*, 406 So.2d 143 (La.1981).

The photographs of the murder scenes are clearly relevant, corroborating the testimony of the State's witnesses as to the location of the bodies, the apparent sequence the murders occurred in and the multiple gunshot wounds to at least two of the victims.

This Court will not find the photographic evidence was admitted in error unless the photographs are so gruesome as to overwhelm the jurors' reason and lead them to convict the defendant without sufficient other evidence. *State v. Watson*, supra; *State v. Ward*, 483 So.2d 578 (La.1986).

The photographic evidence was admitted during the trial's guilt phase following testimony of the investigating officers and the pathologist on Friday, October 25, and Saturday, October 26, 1985, respectively. The court recessed for the weekend following introduction of the last of the photographs. Trial resumed Monday, October 28, 1985. Guilty verdicts were returned October 31, 1985, and the jury deliberated and decided on the death penalty the same date. The emotional impact of the photographs

had time to dissipate before the State concluded its case and the jury reached the deliberative stage. Without doubt, the primary effect of having viewed the photographs was to impress upon the individual juror the seriousness of the task to which he or she was sworn. The State was entitled to no less.

This Court, in *State v. Lowenfield*, 495 So.2d 1245 (La.1985), considered the admissibility of photographs of five murder victims. Lowenfield was convicted of murdering four adults and one child in his former girlfriend's house. All the victims were shot in the head and all suffered multiple gunshot wounds. The weapons used were a .38 caliber pistol and a .22 caliber rifle. This court found the prejudicial effect of the pictures did not outweigh their probative value. The photographs of murder victims are admissible to prove corpus delicti, to identify the victims, to corroborate the cause of death to show location, placement and severity of wounds. One photograph of each victim was put into evidence.

We find the photographic evidence was relevant and probative in proving the State's case against Michael Owen Perry. They proved corpus delicti, helped identify the victims, corroborated the cause of death, the types of weapons used and the location and severity of the wounds. We find no merit in this assignment of error.

ASSIGNMENT OF ERROR NO. SIX

Defendant's sixth and final assignment of error contends the trial judge erred when he failed to grant defendant's motion for a mistrial following a state witness's oblique reference to the defendant's theft of a radio. Defendant argues this evidence of other crimes preju-

diced the jury against him and led to his conviction on five counts of first degree murder.

We find no merit in this assignment of error. This Court has addressed similar situations and found other crimes evidence insignificant when weighed against the offense for which the defendant was on trial. *State v. Parker*, 421 So.2d 834 (La.1982), *cert. den.*, 460 U.S. 1044, 103 S.Ct. 1443, 75 L.Ed.2d 799; *State v. Abercrombie*, 375 So.2d 1170 (La.1979), *cert. den.*, 446 U.S. 935, 100 S.Ct. 2151, 64 L.Ed.2d 787. In *Parker, supra*, the defendant was on trial for two counts of first degree murder in connection with the armed robbery of a restaurant. Defendant's arrest came 17 days after the robbery-murders, following another armed robbery, when police chased the car defendant occupied. The prosecutor carefully deleted reference to the second armed robbery but explained the apprehension of defendant as the consequence of a traffic violation. This Court said: "The evidence of misdemeanor traffic violations was hardly evidence of other crimes of any significance and did not portray him prejudicially as a 'bad man' capable of murder." *Parker* at 840. The same thing, in the context of multiple murders, might reasonably be said of the theft of a radio.

In *Abercrombie, supra*, there was evidence of a minor vandalism, but the Court said such evidence would not "inflame a jury to the point that it would be influenced to convict an accused of first degree murder." *Abercrombie* at 1176.

The reference to Perry's alleged theft occurred in the explanation of his apprehension in Washington, D.C. The murders occurred in Lake Arthur, Louisiana, around noon on July 17, 1983. Perry arrived in Washington, D.C. in late evening on July 18, 1983. The bodies were discovered the next day. Perry was arrested July 30, 1983. He came to the attention of Washington police after a person checking into a Washington hotel complained Perry walked off with a radio belonging to the hotel guest. The Washington policeman testified he was merely running a routine check on the man involved in the theft complaint when he was informed Perry was wanted in Louisiana for five murders. The policeman had not yet arrested Perry for theft.

An explanation of the Washington arrest was necessary to lay the foundation for introduction of evidence found in Perry's Washington hotel room, and the discovery of Perry's parents' automobile in Washington. A television set recovered from the Washington hotel room was found with the names of all five victims marked on the side of the set. The mention of Perry's alleged theft of the radio came as the prosecutor questioned Washington patrolman James Young about how he came into contact with Perry. Young said Perry and the complaint were disputing the ownership of a radio. Defendant objected timely.

The defendant is correct that the State may not introduce evidence of other crimes without giving notice that it intends to do so. *State v. Prieur*, 277 So.2d 126 (La.1973). The State replies it never intended to introduce evidence of the theft of the radio and carefully avoided saying theft. In fact, the prosecutor replies, the defendant's counsel was the first person to categorize the encounter as a complaint of a theft.

We find no merit in this assignment. The evidence of the theft of a radio pales in significance to the five counts of first degree murder and would not portray defendant as a "bad man" capable of murder.

CAPITAL SENTENCE REVIEW

This Court reviews every death sentence to determine if the penalty is excessive. La.C.Cr.P. art. 905.9 and Louisiana Supreme Court Rule 28. The Court is required to determine:

(a) Whether the sentence was imposed under the influence of passion, prejudice or any other arbitrary factors, and

(b) Whether the evidence supports the jury's finding of a statutory aggravating circumstance, and

(c) Whether the sentence is disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

PASSION, PREJUDICE AND ARBITRARY FACTORS

The jury's conviction of Perry for first degree murder on all five counts was supported by the jury's finding of two aggravating circumstances on each count: the offender knowingly created a risk of death or great bodily harm to more than one person; and the offense was committed in an especially heinous, atrocious or cruel manner.

We have previously discussed, in Assignment of Error Number Five, the State's use of multiple color photographs of the victims, and the effect of the photographs during the guilt stage. We now decide if the photographs introduced an arbitrary factor into the jury's recommendation of the death penalty.

The photographs were introduced in the guilt phase, and were not used in the sentencing phase to arouse the jurors' hostility toward the defendant. In the context of a case with substantial proof of guilt for five unprovoked murders a death penalty recommendation is not surprising. It is difficult to believe the photographs pushed the

jury toward a recommendation of death for this mass murder.

The State contended the murders were committed in an especially heinous, atrocious or cruel manner. To prove this, the State introduced, inter alia, photographs of the victims.

The use of evidence to prove a statutorily enumerated circumstance in support of the death penalty, although it may prejudice the defendant's interests, does not introduce an arbitrary or prejudicial factor sufficient to require the penalty be set aside. We find the evidence of this alleged aggravating circumstance did not constitute an arbitrary factor in the proceedings.

The defendant contends further the jury was influenced by an arbitrary factor when the prosecutor misstated the law during closing argument of the sentencing phase. We find the misstatement does not present reversible error. The prosecutor spoke only in rebuttal of defense counsel's closing argument, but during that rebuttal, the prosecutor said, "The law says any person that's convicted of a first degree murder shall be sentenced to death."

The Court will not reverse on the basis of an improper comment during closing argument unless the Court is convinced the comment influenced the jury and contributed to the verdict. *State v. Bates*, 495 So.2d 1262 (La.1986); *State v. Ford*, 489 So.2d 1250 (La.1986). There was no defense objection to this misstatement of the law. The misstatement was overcome by the judge's instructions to the jury. The court correctly stated the law requires a unanimous finding of an aggravating circumstance and requires the weighing of any mitigating circumstances prior to the jury's decision to consider the death penalty. The judge's charge in effect informed the

jury a person found guilty of first degree murder does not automatically receive the death sentence.

MITIGATING CIRCUMSTANCES

The defense argues the jury ignored the mitigating circumstances of defendant's alleged mental disorders. The defense counsel used its closing argument at sentencing to focus on defendant's mental condition. Counsel asked the jurors to consider defendant's appearance, mannerisms and conduct during the eight-day trial. Defendant's counsel said the defendant was not like normal people, that he had a mental disorder which caused him to commit a vicious crime, which normal people abhor. Three doctors had testified the defendant suffers from a mental disorder, the jury was reminded. The prosecutor's rebuttal said murderers are not ordinary people: "That's why they do what they do." He said the physicians who believed defendant was sane observed him for five months at a mental institution. Through both the defense counsel's argument and the court's instructions to the jury, the jurors were reminded they had to consider mitigating circumstances.

Defense counsel argues the mitigating circumstances were apparently overlooked by the jury. We find the conflicting medical testimony on defendant's mental condition was provided to the jury and the jurors chose to believe the State's experts, that the defendant did not suffer from a mental disorder so overwhelming that he was insane or unable to control or understand his actions.

STATUTORY AGGRAVATING CIRCUMSTANCES

The jury found the evidence supported the existence of two aggravating circumstances: the offender knowingly created a risk of death or great bodily harm to more than

one person; and the offense was committed in an especially heinous, atrocious, or cruel manner.

The evidence fully supports the aggravating circumstance: defendant knowingly created a risk of death or great bodily harm to more than one person. He killed two young men at 639 Louisiana Street within seconds. Defendant's parents and his two-year-old nephew were gunned down as they entered their home. He not only created a risk of death to more than one person at each crime scene but converted the risk into accomplished actuality. The random firing of weapons, as shown by the physical evidence, cannot be less than a risk of death to the multiple persons present at the scenes.

The jury's finding that the murders were committed in an especially heinous, atrocious or cruel manner was previously discussed in the consideration of arbitrary factors in sentencing. It is unnecessary that we consider the subject matter in the context of statutory aggravating circumstances. Only one aggravating circumstance need be found for the imposition of the death penalty. La.C.Cr.P. art. 905.3; *State v. Bates*, supra; *State v. Byrne*, 483 So.2d 564 (La.1986); *State v. Rault*, 445 So.2d 1203 (La.1984). Since we have determined the jury was correct in finding the offender created a risk of death or great bodily harm to more than one person, the death penalty is validated.

PROPORTIONALITY OF THE SENTENCE

The Court is required to weigh the sentence of death against the particular defendant and the offense(s) of which he is found guilty.

Michael Owen Perry was 28 when he committed these five murders. He lived in a small trailer behind his par-

ents' home. He was unemployed, despite having graduated from high school, then attending one university briefly and later completing thirteen hours of college credit at LSU-Eunice. His work history was brief. He either resigned or was fired from his jobs. His uncle said the defendant stated he would not work because his parents had to support him.

Perry was one of three children. His brother died in an oil rig accident. Susan, his sister, has been committed to Central Louisiana State Hospital on several occasions. Perry's history of emotional or mental disorders dates to 1979, when his parents asked he be examined by psychiatrists at the University of Texas Medical Branch Hospital at Galveston. There is no evidence he was hospitalized then. In March 1981, his parents obtained his commitment to Central State Hospital at Pineville. He was discharged on May 22, 1981 and referred to a community mental health clinic. On September 11, 1981, he was readmitted to the hospital at Pineville, but he walked away the same day and returned home, where his parents apparently allowed him to stay.

The reports of mental health professionals and general practitioners who examined him subsequent to the homicides has been set forth previously in great detail, and we will not reiterate that evidence. We note only the jury apparently chose to believe the state's expert witnesses and their opinion that the defendant's mental problems did not rise to the level of insanity. Even the physicians who testified for the defense said Michael Owen Perry was smart enough to act as if he were insane when it might benefit him. They also said Perry could conform his behavior to the norm most of the time.

The offense was a shocking mass murder in a small town. Five members of defendant's family were killed on a

Sunday morning, two as they slept in their beds. After killing his parents, his cousins and a nephew, the defendant took money from his mother's belongings and from his father's pockets and fled the state in his father's car, taking refuse in a Washington hotel. He killed the adult victims in their own homes in a violent, bloody encounter which was deliberately planned. He waited for his parents more than an hour following his murder of his two cousins in a house just two doors away. A total of three weapons were used. The death penalty in such a case is proportionate to the offenses and to this particular defendant.

We must also weigh this death sentence against the death sentences imposed in other cases in the jurisdiction in which this case was tried. *State v. Ford*, supra. If the recommended sentence is inconsistent with sentences imposed in similar cases, an inference of arbitrariness arises. *State v. Glass*, 455 So.2d 659 (La.1984).

Although the homicides occurred in Jefferson Davis Parish, the trial was moved to East Baton Rouge Parish after the court experienced initial difficulty in selecting a jury. Since 1978, there have been five murder trials in East Baton Rouge Parish where the jury recommended the death penalty. All those cases involved the death of one victim. One case was the rape and murder of an eleven-year-old child. The other four cases were murders committed during an armed robbery.

In *State v. Williams*, 392 So.2d 619 (La.1980), defendant James C. Williams was convicted of killing a service station owner during an armed robbery. The case was remanded by this Court for the judge's failure to instruct the jury that lack of a unanimous sentence recommendation would result in a sentence of life imprisonment. After remand, defendant received a life sentence.

Robert Wayne Williams was executed for the murder of a supermarket security guard during a holdup. *State v. Williams*, 383 So.2d 369 (La.1980), 449 U.S. 1103, 101 S.Ct. 899, 66 L.Ed.2d 828. The victim was shot in the face with a shotgun.

Colin Clark was convicted of a murder-armed robbery and this court affirmed his conviction and death sentence, *State v. Clark*, 387 So.2d 1124 (La.1980). A federal court later reversed the conviction and the sentence. *Clark v. Louisiana State Penitentiary*, 694 F.2d 75 (5th Cir. 1982). Clark subsequently entered a guilty plea to first degree murder without capital punishment.

The conviction and death sentence of Andrew Lee Jones for the rape-murder of an eleven-year-old child was affirmed by this Court in *State v. Jones*, 474 So.2d 919 (La.1985), *cert den.*, ___ U.S. ___, 106 S.Ct. 2906, 90 L.Ed.2d 993.

Jeffrey C. Clark killed his victim during an armed robbery. His conviction and death sentence were affirmed. *State v. Clark*, 492 So.2d 862 (La.1986).

None of these cases involves multiple victims. In Perry's case, the State argued the murders were committed during the perpetration of an aggravated burglary of the two houses and the armed robbery of Perry's parents. The jury did not return with a verdict agreeing with the state's argument on those circumstances.

In a case most similar to this one, this Court affirmed the death sentences imposed on Leslie Lowenfield for three counts of first degree murder. He was also convicted in Jefferson Parish of two counts of manslaughter. *State v. Lowenfield*, supra. Lowenfield killed his former girlfriend after she spurned him. He also killed three other members of her family and a neighbor who ran into the house

when he heard gunshots. The psychiatrists who examined Lowenfield found him to be "angry, primitive, paranoid, and narcissistic." Lowenfield, unlike Perry, did not have a history of treatment in mental hospitals.

Defendant did kill all five victims in their homes. In *State v. Williams*, 490 So.2d 255 (La.1986), this Court found a review of death cases state-wide showed juries "often find death sentences appropriate where an innocent victim was murdered inside the sanctuary of his or her own home." *Williams*, supra at 264.

The death sentences for five offenses of first degree murder is not disproportionate to other cases in East Baton Rouge Parish where the death penalty was recommended.

SANITY DETERMINATION PRIOR TO EXECUTION

The State of Louisiana will not execute one who has become insane subsequent to his conviction of a capital crime. *State v. Allen*, 15 So.2d 870 (La.1943). No state imposes the death penalty on the insane. *Ford v. Wainwright*, ___ U.S. ___, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986). The State will not impose the death penalty on Michael Owen Perry if a court determines he has become insane subsequent to his conviction for first degree murder and lacks the capacity to understand the death penalty. Counsel for the defendant may apply to the trial court for appointment of a sanity commission to make such a determination. Indeed, the allegation of mental incapacity may be raised by the court or the prosecutor. La.C.Cr.P. art. 642.

If the defendant seeks a sanity commission prior to execution, he bears the burden of providing the trial court with a reasonable ground to believe he is presently

insane. *State v. Allen*, supra; La.C.Cr.P. art. 642; *State v. Lowenfield*, supra. Defendant's burden is to show by a preponderance of evidence that he lacks the present capacity to undergo execution.

We have discussed extensively Perry's mental capacity to proceed despite his withdrawal of the plea of "not guilty and not guilty by reason of insanity." We have determined the defendant was capable of proceeding at trial. A similar review might be in order prior to execution. We stress that the determination of defendant's sanity is for the trial judge, not a sanity commission alone. *State v. Rogers*, supra.

DECREE

For the reasons assigned, defendant's conviction and sentence are affirmed for all purposes except that this judgment shall not serve as a condition precedent to execution as provided by La.R.S. 15:567 until

(a) defendant fails to petition the United States Supreme Court timely for certiorari,

(b) that court denies his petition for certiorari,

(c) having filed for and been denied certiorari defendant fails to petition the United States Supreme Court timely under their prevailing Rules for rehearing of denial of certiorari, or

(d) that court denies his application for rehearing.
CONVICTION AND SENTENCE AFFIRMED.

Number 9-85-472

Section V

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA

Plaintiff

versus

MICHAEL OWEN PERRY

Defendant

Honorable L. J. Hymel
Judge Presiding

MINUTES OF COURT

[RECORD—P.1]THURSDAY, JANUARY 14, 1988: CHARGE, FIRST DEGREE MURDER (5 CTS.). This matter came before the Court for a status conference, pursuant to previous assignment. Motion to enroll Keith Nordyke, Judith G. Menadue and June E. Denlinger was filed herein, and the Court granted same. All three counsel were present in court, and Mr. Rene Salomon, Assistant Attorney General, was present for the State. Motion to withdraw as counsel of record was filed on behalf of Mr. Michael Vitiello, and the Court granted same. The Court appointed Doctors Aris Cox and Theresita Jiminez to

examine the accused herein. Defense counsel then moved to have psychologist appointed to examine the accused. The court gave each side five days within which to submit a list of psychologists that they wished appointed herein, including their addresses and phone numbers. Motion for Medical Records was filed herein by Mr. Nordyke, and the Court signed motion ordering the Department of Corrections to produce said on or before the 4th, day of February, 1988. Certified copy of motion and order to be sent to Department of Corrections. Sanity Hearing fixed for hearing on April 20, 1988 at 1:00 p.m. The Court ordered that Mr. Salomon prepare the necessary paperwork to have the accused present on the date of hearing. Court met with Mr. Nordyke, Ms. Menadue and Ms. Denlinger and discussed Rule 1.4 of the Louisiana Code of Professional Responsibility, this being an in-camera discussion. The Court set aside the appointment of Mr. Richard M. Arceneaux, and Mr. Clarence E. Romero, who were also present just prior to in-camera discussion, **[RECORD—P.2]** and also left prior to discussion taking place.

THURSDAY, JANUARY 21, 1988: CHARGE: FIRST DEGREE MURDER. (5 CTS.) This matter came before the Court instanter. Court, pursuant to Supreme Court orders in this case, is appointing a sanity commission to determine the present sanity of defendant. Pursuant to letters received from counsel for State and Defense, the Court is appointing Drs. Glen Estes, Dr. Curtis Vincent, Dr. Aris Cox and Dr. Theresita Jiminez. Sanity hearing date previously set was retained.

Motion for State To Supply Funds With Which to Hire A Psychiatrist And Psychologist file herein; Court ruled said motion moot as Court has appointed doctors requested by defense for a sanity commission.

Ex Parts Motion For Delegation of Decision Making Authority filed herein; Court granted said motion and appointed Keith B. Nordyke as defendant's representive in these criminal proceedings authorized to make decisions on behalf of defendant as deemed necessary and in best interest of Michael Owen Perry. Defense counsel to submit written orders in conformation with the minute entry within ten days.

Pursuant to defense counsel's request both of the above Motions have this date been filed and *sealed* and placed in the record of these proceedings.

WEDNESDAY, APRIL 20, 1988: CHARGE: FIRST DEGREE MURDER (5 CTS.) This matter came before the Court for a sanity hearing, pursuant to previous assignment. The accused was present in court represented by Mr. Keith Nordyke and Ms. June Denlinger and presence of Ms. Judith Menadue was waived. Mr. Rene Soloman, Assistant Attorney General, was present for the State of Louisiana. Mr. Joe Gierrusso enrolled as counsel of record also and Court signed order granting same. Sanity hearing then came on to be heard. Testimony being heard and evidence introduced and Mr. Soloman objected to video taping testimony of accused and Court overruled same. Further testimony was heard and Defense rested. Court took matter under advisement and will ruled on May 26, 1988 at 9:00 a.m. Defense given until May 6, 1988 at 5:00 p.m. to file memos. State has until May 20, 1988 at 5:00 p.m. to respond. State to prepare order for accused to be present for ruling.

[RECORD—P. 3] WEDNESDAY, MAY 18, 1988: CHARGE: FIRST DEGREE MURDER. (5 CTS.) Court granted motion for extension of time in which to file post-hearing memorandum and reassigned until June 20,

1988. Cancel May 20, 1988. Ruling set for July 22, 1988 at 9:00 a.m. Notify all.

MONDAY, JULY 18, 1988: CHARGE: FIRST DEGREE MURDER. (5 CTS.) On motion of Court ruling on sanity hearing was reassigned to August 26, 1988 at 11:00 a.m. Notify all. Other motion still set for July 22, 1988.

FRIDAY, JULY 22, 1988: CHARGE: FIRST DEGREE MURDER (5 CTS.) This matter came before the Court for motion for release of movable property, pursuant to previous assignment. Mr. Mac Morgan, counsel for the estate, was present and Court granted judgment on rule and signed accordingly.

FRIDAY, AUGUST 26, 1988: CHARGE: FIRST DEGREE MURDER (5 CTS.) This matter came before the Court for ruling and motions, pursuant to previous assignment. Mr. Keith Nordyke and Ms. June Dinlinger, attorneys for the accused were present in court. Mr. Rene Salomon, Assistant Attorney General, was present for the State of Louisiana and Ms. Annette Viator, present for the Department of Public Safety and Corrections. Motion to withdraw as counsel of record filed herein by Ms. Judith Menadue was granted by the State. Ms. Joe Giarrusso, attorney for the accused, was not present today due to having sustained injuries from a recent car accident. Mr. Nordyke objected to the accused not being present herein for these proceedings. The defense objected to the Court considering weekly or monthly reports filed into the record of this case by the officials from the Department of Corrections was overruled by the Court. The Court further ordered that said reports be filed into the record, the Court having considered same, as Court exhibit number one, inglobo. Based on the Court's legal research in this

matter, the Court vacated and set aside its order of January 21, 1988 appointing Mr. Nordyke as the person having authority to make decision for the accused herein. The Court, based on the weekly reports received, ordered Drs. Cox and Jiminez to re-examine the accused relative to his competency as set up by the Louisiana Supreme Court in the original Michael Owen Perry decision. And those doctors are to appear in court on Friday, September 30, 1988 at 0:00 a.m. for their oral testimony concerning their new examination.

[RECORD—P. 4] The Court ordered that pending said hearing, pursuant to R.S. 15:830.1, that the Department of Public Safety and Corrections provide treatment and medication to the accused, as to be determined by the medical staff of the Department of Public Safety and Corrections, until at least September 30, 1988 at 10:00 a.m. when the Court rules on the issues herein. The Court ordered no further memo or briefs from either side. If there is a case decided between now and September 30, that is relevant herein, the Court would accept a copy of said case. The Court will prepare a written order in conformity with its oral order and ordered that the order be served on the accused at the State Penitentiary. Notify Drs. Cox and Jiminez to be present on September 30, 1988 at 10:00 a.m. The Court will rule on this date. Mr. Nordyke objected and assigned error of the Court's basing its decision on said weekly reports and notified the Court of his intention to take supervisory writs herein on this issue, and further objected to the forced medication of the accused, and objected to not having a hearing on that specific issue. Mr. Nordyke requested a transcript and a return date. Mr. Nordyke further requested a stay on the medication. The Court denied request for a stay herein, as well as a transcript. Court gave Mr. Nordyke until September 9, 1988 to prefect writs.

FRIDAY, SEPTEMBER 30, 1988: CHARGE: FIRST DEGREE MURDER (5 CTS). This matter came before the Court for a sanity hearing, pursuant to previous assignment. The accused was present in court represented by Mr. Keith Nordyke, Mr. Joseph Giarrusso, and Ms. June Denlinger. Mr. Rene Salomon, Assistant Attorney General, was present for the State of Louisiana. Continuance of sanity hearing held with testimony being heard and objected being noted. Court continued matter until October 21, 1988 at 10:00 a.m. for additional testimony and ruling.

FRIDAY, OCTOBER 21, 1988: FIRST DEGREE MURDER (5 CTS). This matter came before the Court for continuance of sanity hearing this date pursuant to regular assignment on defendant's report for a competency hearing for determination as to whether or not he possesses sufficient mental capacity to proceed to execution, pursuant to previous assignment. The accused was present in court represented by Mr. Keith Nordyke, Ms. June Denlinger and Mr. Joe Giarrusso, Jr. Mr. Rene Salomon, Assistant Attorney General, [RECORD—P. 5] was present for the State of Louisiana.

After considering the evidence adduced in the form of written reports and documents filed herein and the oral testimony of the witnesses presented, for oral reasons this date assigned:

IT IS ORDERED that the defendant, Michael Owen Perry, is mentally competent for purposes of execution in that he is aware of the punishment he is about to suffer and he is aware of the reason that he is to suffer said punishment.

IT IS FURTHER ORDERED that defendant's competency is achieved through the use of antitropic or antipsychotic drugs including Haldol and the Louisiana Department of Public Safety and Corrections is further ordered to maintain the defendant on the above medication as to be the prescribed by the medical staff of said Department and if necessary to administer said medication forcibly to defendant and over his objection.

Defense counsel objected to Court's ruling, noted. Court granted counsel's motion for stay order, notifying Court of intent to take writs. Court then set appeal return date or date for perfection of writs for November 22, 1988; assignment of error due: November 16, 1988. Transcript due: November 10, 1988. Court stayed execution of the judgment entered today. State then requested clarification of Court's ruling as to setting execution date for the accused. The Court, for oral reasons assigned, advised State execution date pending awaiting orders from Supreme Court.

REPORTS FROM THE SANITY COMMISSION APPOINTED BY THE 19TH JUDICIAL DISTRICT COURT

[RECORD—P. 26] Curtis M. Vincent, Ph.D.

5000 Constitution Ave.
Baton Rouge, LA 70808
928-6560

March 11, 1988

The Honorable L. J. Hymel, Judge
19th Judicial District Court
Parish of East Baton Rouge
Courthouse
Baton Rouge, Louisiana 70801

RE: Michael Owen Perry

Dear Judge Hymel:

On March 5, 1988, I evaluated Michael Owen Perry alone for 90 minutes and conducted a subsequent interview with a guard who has known him since he arrived in Angola. The guard indicated that Mr. Perry had been taking psychotropic medication for four to six weeks. Mr. Perry has a history of five psychiatric hospitalizations beginning in the John Sealy Hospital and later in Central Louisiana State Hospital (two admissions), Feliciana Forensic Facility and finally in the psychiatric treatment center in Angola State Penitentiary. Discharge diagnoses have varied from Paranoid Schizophrenia to Schizoaffective Disorder. On July 17, 1983, he committed five counts of first degree murder against family members. He was subsequently found guilty, sentenced to death, and imprisoned in Angola. The current evaluation pertains to the issue of competency to be executed.

Mr. Perry presented to the evaluation with a scraggly beard and very short haircut. He has a receding hairline

and there were several black smudges on his face which he indicted were from burning plastic from an audio cassette tape. He initially asked if I was Mr. Nordyke or some other attorney. He was wearing handcuffs, waist restraints and legs chains as is required for death row inmates.

Mr. Perry was fairly tangential during my session with him. At one point he referred to himself as God and stated that he married a woman since being in Angola. He complained of experiencing auditory hallucinations, both at the time of the offense and at the time of the evaluation.

Psychological screening reflects a psychotic disorder characterized by a high level of suspiciousness coupled with a tenuous grip on reality. He has far greater difficulty relating to females than he has with males. The delusional material regarding Olivia Newton-John is one manifestation of this symptom.

An attempt was made to administer the Thematic Apperception Test, but Mr. Perry refused to comply, saying, "No. I hate school." Part of the Competency Screening Test was administered, but he refused to complete that measure as well **[RECORD—P. 27]** because "it's too hard on my mind." The section which he was willing to respond to, as well as interview material, indicate that Mr. Perry has a sufficient understanding of the functions of the court and its various members. He has an appropriate appreciation for the judicial process and the consequences were he to be found competent to proceed.

Other areas required for competency, however, appear to be significantly impaired. His descriptions of the events leading up to his arrest, reflecting on his guilt or innocence and his state of mind at the time are very inconsistent. Consideration of this factor along with his

questionable ability to evaluate and confirm or contradict testimony, renders him, in my opinion, incompetent to proceed.

I find Mr. Perry's case to be a very interesting one and I appreciate the opportunity to serve on this Sanity Commission.

Sincerely,

/s/ Curtis Vincent, Ph.D.
CURTIS VINCENT, PH.D.
Clinical Psychologist

CV/pcp;

cc: Keith Nordyke
Attorney at Law
228 Napoleon
Baton Rouge, LA 70802

Rene Solomon
Attorney General's Office
1885 Woodale Boulevard
Suite 1010
Baton Rouge, LA 7

[RECORD—P. 30]

Glen Estes, M.D.
Jeanne M. Estes, M.D.
Suite 3
4521 Jamestown Avenue
Baton Rouge, Louisiana 70808-3264
(504) 927-3062

March 15, 1988

The Honorable L. J. Hymel
19th Judicial District Court
Parish of East Baton Rouge
State of Louisiana

RE: State of Louisiana
vs.
Michael Owen Perry

Sir:

I examined Michael Owen Perry at your request on March 9, 1988 in regard to his mental capacity. Examination took place in his cell in the hospital ward at Angola State Penitentiary, for approximately sixty minutes. Prior to interview he was advised of my identify and my job as a psychiatrist to provide a medical report to the court. He indicated that his attorney, Mr. Nordyke, had sent him a letter explaining that a number of doctors would be asked to provide information for his court hearing scheduled in April.

INTERVIEW FINDINGS:

Interview was very difficult because of Mr. Perry's continual disruptive behavior. He got in and out of bed. He paced around the cell. He got a drink of water. He used the toilet. He gestured as if to give hand signals to someone

beyond the open door. He called out to passersby. He talked to the guards. He put his hand on my jacket and said, "We don't get to see no nice clothes around here." He interrupted and ignored questions to ask questions on his own such as the following:

"This your first trip to Angola?"

"Got a cigarette?"

"Did they strip search you?"

"Let me see your teeth."

[RECORD—P. 31] "You married?"

"You commute back and forth?"

"What kind of pen is that?"

Mr. Perry was often indirect or irrelevant in his answers:

When asked how for he went in school, he said "Thirteen or seventeen hours." Only upon further questioning did it become clear that he was referring to college course hours.

When asked what subjects he studied, he said, "I'm a doctor a little bit, eight percent, now nine percent, now ten percent, eleven percent, twenty-two percent, eighty-eight percent psychiatrist, ninety-eight percent love!"

When asked why he needs to take medicine, he said, "I was in Jackson . . . wearing leg irons . . . and the doctor was making fun of me."

He gave, at different points throughout the interview, a variety of explanations for his crimes and convictions:

He spoke as if he were the victim: He said "they" were picking on him and "they took my stuff . . . my house, the brainwasher . . . and I been ripped off." When asked who "they" were, he said, "It was a setup

. . . Judge Peters." He said the setup was "for the money," which was "probably scattered all over the world by now."

He spoke as if he were somehow justified: "I did the murders. I had to . . . They took everything I had . . . I'm the kingpin, Mafia, so I shot them dead . . . Whoever is the cause of this is going to get sued."

He spoke as if he had a religious mission: "I had to get rid of them, to make them stop breaking the Ten Commandments . . . I'm God."

He indicated that he was simply in the wrong place: "I'm supposed to be in Tennessee now, a clean state."

[RECORD—P. 32] He indicated that he shot his mother, father, two cousins, and nephew "because of the voices" which were saying, "Kill, kill. You broke the nine commandments."

At no point did Mr. Perry verbalize regret or remorse for what he had done. He did not show sadness when speaking about the deaths of his parents and family. He did not acknowledge having done wrong, nor any reason why he should be punished. When asked if the murders were wrong, he said, "I didn't want to shoot those people, but I guess I did the right thing."

He tended not to acknowledge responsibility, or his own role in determining the actions of others toward him. Instead, he tended to present himself as the victim:

He said that, when he was a child his parents "kept whipping me," and it was "for no reason at all."

He said doctors have made fun of him, and they bring him to the hospital "to torture me."

He said that in prison, "I'm having to fight . . . Big people. They want my money but I'm broke."

PAST HISTORY:

It was impossible to get a consistent past personal or medical history from Mr. Perry. Many of his answers were implausible, or contradicted by information from records sources: He said that he got the burn on his leg when he was seven years old. He said he is married, and his wife is now in Belgium. He said was in the Army and the Navy for three years, where he was taught "to be a professional killer." He said the sheriff, in 1982, advised him to escape from the hospital in Pineville.

Mr. Perry did not provide coherent information. His accounts of past personal and medical history tended to be disorganized and not in chronological order. His failures of logical or accurate time references are illustrated by the following:

> He indicated that he was married one time. He said he got married "when I was seven years old." He said he has been married now for 8 years.
>
> [**RECORD—P. 33**] He said they year is "nineteen eighty eight." He said he has been locked up since 1982. He said he was in the Army for one and one-half years, then in the Navy for one and one-half years, then quit the Navy "one and a half years" ago.
>
> He said, "We're really in the year two thousand. This twenty first century, that's bullshit."

CURRENT MENTAL STATUS:

Mental status was generally alert, restless, and inattentive. He was dressed in hospital pajamas, unshaven; no efforts to maintain personal appearance were apparent. He did not appear to be in any physical distress.

His speech was generally clear, but his statements were often disorganized, tangential, or irrelevant. At times, he

spoke slowly, hesitated, gave brief answers, and seemed to have very little to say. At other times he showed rapid, pressured speech and loose associations as he spontaneously expressed a number of ideas jumping from one topic to another.

Mood did not show normal quality and intensity. Some of the time he showed inappropriate humor and smiling. He laughed, for example, when asked what day of the week it was. He laughed when asked to remember four simple words as a test of memory, and said, "That's fun! That's the most part!: Some of the time he showed abnormal blunted affect, little or no emotion at all. He did not appear to display emotional qualities of sadness normally to be expected when a person relates a variety of circumstances from their past concerning other people. Affect to anger was displayed a few times when he rambled excitedly about other people setting him up and taking his money.

Thoughts were often illogical and disorganized. He indicated that he has had his thoughts broadcast out loud to other people: "I found that out this morning; they said I was shouting, but my mouth was shut." He said that his mind sometimes plays tricks on him. When asked what kind of tricks, he said, "All kinds of tricks, sex mostly." He would not elaborate, saying "That's all I can say," and on further questioning revealed that was hearing voices which told him [**RECORD—P. 34**] "Shut up." He described hallucinations of tones and voices when there is nothing there, for many years, and lately on a daily basis. They seemed to have a realistic quality to him; on one occasion he asked if I could hear the buzzing tone he was hearing. He said the voices always told him bad things, "They're evil." He said there were many voices, "about a thousand of them." First, he reported that he was hearing

them only on his left side; then he said he was hearing them on both sides. On another occasion he reported, "They're sitting down here with me. They say they're going to get me out." Near the end of the interview, he reported they were saying to him, "Screw you."

His sensorium was generally oriented: He was able to give the month as March, the year as 1988, but erred in saying the day, Wednesday, was "Tuesday." He knew the place was "Angola," a prison. He recognized people and various roles: the uniformed guards, and at least one of them by name, for example. He acknowledged his own name, but was inconsistent about his identity because he also said he was "God, in real life." His immediate retention and recall was intact. He was able to repeat a span of 4 digits forward, but could give them in reverse order only after several repetitions and mistaken answers. Abstract reasoning was demonstrated by way of similarities and opposites. Intellectual functions seemed to be variable and inconsistent because of distractibility, inattentiveness, and poor concentration.

Insight and Judgment regarding the nature of his illness and need for treatment were poor. At one point, when asked if he thought he was mentally ill, he said no. He gave different responses at other times when he was asked about being sick:

"I can't say so, but I'm sure I am."

"The medicine makes me sick."

"I'm in the hospital now because I smoke cigarettes."

CURRENT TREATMENT:

Current medications were described as "Haldol" plus another one he did not know the name of. He did not know

how much the Haldol dosage was. He could not be specific about when he most recently had been given any pills or injections. He [**RECORD—P. 35**] said that they bring him to the hospital "once a month" in order to "shoot me up" with drugs. He seemed to be very excitable, tense, and inconsistent while discussing medicines. He said medicine gives him headaches and stomach aches. He described having had "side effects" such as drooling and tightness in his throat, stiffness, and trouble walking caused by medicine in the past. It was not clear how long ago he had these side effects; or if they were caused by Haldol or some other drug. At one point, he said the medicine helped him sometimes, but he could not detail what symptoms were helped. At another point, he said that it never helped him, and he had no need to take it.

ADDITIONAL INFORMATION:

After my own examination of Mr. Perry, Mr. Nordyke's office provided six volumes of copies of various records which I reviewed:

Feliciana Forensic Facility chart, 10/11/83 to 3/26/84, including Closing Summary (Final Diagnosis Schizoaffective Disorder), correspondence, treatment plans, Admission History, Nursing Assessment, Psychiatric Evaluation, Progress Notes, Psychological Evaluation, Social History, Doctor's Order Sheets, Medical History and Physical, Dental Report, laboratory test reports, Restraint/Confinement/Suicidal Precaution records, ecg and x-ray reports, Drug Charts, and nursing records;

Angola, Louisiana State Penitentiary, 12/20/85 to 2/8/88 (most recent entry), including Medication Records, Emergency Room records, Physicians Clinic records, Sick Call records (latest date 2/3/88), New General Hospital Progress Notes (1/29/88 most recent entry) and Dis-

charge Summaries from multiple admissions, Mental Health and Behavioral Consultation forms, Mental Health Management Orders for close watches (latest date 1/5/88), Inpatient Medication Records (latest date 2/8/88), LSP Nurses' records, LSP Progress Notes (latest date 1/11/88), various x-ray and laboratory reports, Physician's Orders (latest date 1/11/88), correspondence (including some secondary materials such as records from Feliciana Forensic Facility and Central Louisiana State Hospital);

Central Louisiana State Hospital, admission 3/24/81 to 5/22/81 (Judicial commitment) with elopement 4/13/81 to 4/20/81, Discharge Summary (final diagnosis Paranoid Schizo- [RECORD—P. 36] phrenia), Admission forms, Admitting Note, Physical Exam, History and Psychiatric Evaluation, Social Service History, Doctor's Order Sheets, Medication records, Nurses' records, laboratory and x-ray reports, Psychological Report, Vocational Rehabilitation evaluations, Record of Passes, Treatment plan and problem lists, Progress Notes, correspondence; and records of his readmission 9/11/81 (Judicial commitment) with elopement the same day;

Lake Charles Mental Heath Center records of outpatient treatment (6 visits 4/4/84 to 10/17/84, for diagnoses of Schizoaffective Disorder and Antisocial Personality Disorder), appointment letter 7/13/81 for Jennings Outreach Clinic; copies of records from Louisiana State University enrollment in 1976 and 1977; and other miscellaneous correspondence.

CONCLUSIONS:

Past history, records information, and current mental status are consistent with psychotic mental illness. In my opinion the most likely diagnosis is Schizoaffective Disorder.

This distinction of Schizoaffective Disorder is not definitive because Schizoaffective Disorder, Manic-depressive illness, and Schizophrenia sometimes may have similar symptoms. Each may include delusions or illogical beliefs; hallucinations; loosening of associations; inappropriate affect; agitation, restlessness, or increased activity; distractibility or irritability; poor judgment; inappropriate behavior and impaired job or social functioning. Also, the symptoms of Schizophrenia, Schizoaffective Disorder, and Manic-depressive illness all may vary with time and with influence of medications.

It is my opinion that Michael Perry's present mental condition would substantially impair his capacity to assist defense counsel. Current mental status shows poor contact with reality and disruptive behavior. He failed to show normal ability in recalling and organizing facts, understanding reasons, and exercising judgment in regard to alternatives.

[RECORD—P. 37] It is my opinion that Michael Perry is not completely aware of the nature of the current proceedings against him. He acknowledged being "on Death Row," and knows "they want me dead." He does not understand his sentence as punishment for what he did wrong. He is aware of his hearing scheduled in April, and said it would be "to find out if I can have an execution date." He failed to acknowledge the finality of his death sentence when he referred to his eventual release from prison: "When I get out of here, they'll pay for it." He also spoke of being God, who cannot be executed, and said that he would not be the one to die.

Very truly yours,

/s/ Glen Estes, M.D.
GLEN ESTES, M.D.

[RECORD—P. 38] Theresita G. Jimenez, M.D.
Psychiatrist
Baker Clinic
2402 Main St.
Baker Louisiana 70714

March 10, 1988

SANITY COMMISSION EVALUATION

Honorable L. J. "Jay" Hymel, Judge
Nineteenth Judicial District Court
Parish of East Baton Rouge, Division "J"
222 St. Louis St., Suite 658
Baton Rouge, Louisiana 70801

RE: PERRY, Michael Owen
Docket #9-85-472 Sec. "V"
Charge: 5 Ct. First Degree Murder

Dear Judge Hymel:

As per your court order appointing me to a Sanity Commission, I examined Mr. Michael Owen Perry for competency on February 4, 1988 at the Louisiana State Penitentiary at Angola, Louisiana.

My examination consisted of the standard psychiatric and mental status examination. In addition to these examinations, I also discussed with Mr. Perry the charges against him which he understand he is convicted, the circumstances surrounding the charges, and further, matters pertaining to is understanding of the courtroom milieu, and his rights in a criminal proceeding.

It is my opinion, at this time, according to the criteria established by the Louisiana Supreme Court in the Bennett Decision he is not competent, and he is unable to assist an attorney in his own defense. I feel that Mr. Perry

will become competent with the proper medication adjustment. He does understand that he is convicted and also expressed that he does not want to die. His medication can be adjusted at the LSP.

If you have further question pertaining to this matter, please do not hesitate to contact me at your convenience.

Respectfully yours,

/s/ Theresita G. Jimenez, M.D.
THERESITA G. JIMENEZ, M.D.
Psychiatrist

TGJ:izc

cc: Clerk of Court
District Attorney
Keith Nordyke, Attorney, Judith Menadue, Attorney,
June Denlinger, Attorney

[RECORD—P. 315]

NEURO-PSYCHIATRIC SERVICES, INC.
1035 Calhoun Street
New Orleans, Louisiana 70118

Aris W. Cox, M.D.
Dennis E. Franklin, M.D.
Patricia K. Boyer, M.D.

September 22, 1988

The Honorable L. J. Hymel, Jr.
District Judge 19th Judicial District
Sixth Floor-Governmental Building
222 St. Louis Street
Baton Rouge, LA 70801

RE: Michael Owen Perry
Docket No: 9-85-472

Dear Judge Hymel:

This is to inform you that pursuant to your recent request I have re-examined Michael Owen Perry. The examination took place at the Louisiana State Penitentiary on 7 September 1988. I examined Mr. Perry where he is currently housed, that is on death row.

At the time I examined Mr. Perry, he was being given Haldol Decanoate in the dosage of 2 cc IM every month. In addition, he was being given a supplemental dose of oral Haldol daily. At the time I examined Mr. Perry he was refusing the oral Haldol.

On 7 September 1988, I found Mr. Perry's condition to be deteriorated from my previous examinations of him. Mr. Perry was inappropriate in affect, delusional and exhibited disorganized though processes. In my opinion he was deteriorating and relapsing even though he was receiving medication. My recommendation to the treat-

ment staff at Angola was that his medication be increased in dosage.

At the time I examined Mr. Perry, however, he was still aware that he was on death row and was under a sentence of death for the murder of five members of his family. As far as being able to participate in, or assist with, any legal proceedings that might arise, I did not feel Mr. Perry was competent to assist counsel in such proceedings.

I hope that this is sufficient information. If you desire further clarification, I will be happy to give it to you either at your convenience or at the scheduled hearing in your court on Mr. Perry on 30 September 1988.

Sincerely,

/s/ Aris W. Cox, M.D.
ARIS W. COX, M.D.
FORENSIC PSYCHIATRY CONSULTANT

[RECORD—P. ___]

NEURO-PSYCHIATRIC SERVICES, INC.
1035 Calhoun Street
New Orleans, Louisiana 70118

Aris W. Cox, M.D.
Dennis F. Franklin, M.D.
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April 20, 1988

Honorable L. J. Hymel, Jr.
District Judge
19th Judicial District
6th Floor
Governmental Building
222 St. Louis Street
Baton Rouge, Louisiana 70801

RE: Michael Owen Perry

Dear Judge Hymel:

This letter is written in response to your appointment of me to a Lunacy Commission, to examine Michael Owen Perry. The purpose of this commission is to ascertain Mr. Perry's mental condition, and further to assertion whether or not he is mentally competent to be executed.

I began consulting as a psychiatrist at the Louisiana State Penitentiary in July 1987. I have seen Mr. Perry each month (save one) since I began this consultantship. Therefore, I have had a chance to examine him on several occasions. I have also reviewed the rather extensive medical records on Mr. Perry, from his hospitalizations at Central State Hospital, and at the Feliciana Forensic Facility. I have also reviewed his psychiatric records from Angola, where he has now been incarcerated on death row since 1985.

In my opinion, Mr. Perry suffers from schizoaffective disorder. I consider him to be mentally ill to a severe

degree. During the time I have seen him, I have had a chance to observe him both on and off neuroleptic medication. During the times I have seen him off neuroleptic medication. It has been my opinion that he was so psychotic and so out of contact with reality that he could not appreciate the reason for his execution, nor indeed could he appreciate the execution process itself, nor the seriousness of this sentence. At these times Mr. Perry told me that he was God, and he did not feel that the electrocution process would result in his death.

On the other hand I have seen Mr. Perry at times when, on neuroleptic medication, he has been in fairly good contact with reality, and certainly did appreciate the seriousness of his situation and the purpose of his death sentence.

To me the core issue is whether or not Mr. Perry is to be continued on neuroleptic medication, therefore. It is my understanding that his attorney, Mr. [RECORD—P. ___] Keith Nordyke, has received guardianship over Mr. Perry, and he is now refusing neuroleptic medication on Mr. Perry's behalf. It is my opinion that if Mr. Perry is allowed to remain off neuroleptic medication for any significant period of time (by this I mean three weeks or longer), I believe he will become so psychotic that he will not be competent to be executed.

If you desire any further information in this matter, please contact me at your convenience.

Sincerely,

/s/ Aris W. Cox, M.D.
ARIS W. Cox, M.D.

Forensic Psychiatry Consultant

AWC/jw
2364.02

19TH JUDICIAL DISTRICT COURT PARISH OF EAST BATON ROUGE, LOUISIANA

(caption omitted in printing)

EXCERPTS FROM HEARING.
APRIL 20, 1988

[RECORD—P. 501] By the Court: The Louisiana Supreme Court further indicated that the defendant bears the burden of proving and providing the trial court with reasonable grounds to believe he is presently insane. In order for the Court to even commence these proceedings, I am satisfied that the defendant has gone forward with that and, of course, that's what led to the Court appointing a sanity commission.

* * *

[RECORD—P. 510] Dr. Jiminez:

A I have indicated that at the time I examined Mr. Perry he was not competent, and I felt that he would not be able **[RECORD—P. 511]** to assist his lawyer in his own defense. I also indicated that I feel that Mr. Perry will become competent with the proper medication adjustment. He does understand that he is convicted and also expressed that he does not want to die.

* * *

A Schizoaffective Disorder is an illness wherein the patient has a problem with thinking disorder and at the same time also a problem with his feeling tone or the defective component. When they are in the state of acute illness they **[RECORD—P. 512]** usually are very manic if they are in a manic phase and very paranoid. Now if they are also in the depressed state they could be very withdrawn and would manifesting symptoms like not wanting

to sleep, not wanting to talk or having crying adversity. The problem is also that they would have some distortion in their thinking and that would be the Schizophrenic component of the illness.

Q Has Michael expressed to you on occasion that he was God?

A Yes, sir.

Q That a delusion or something that he has expressed on fairly many occasions, is it not?

A Yes, sir.

Q And he expressed that to you way back in '83 and '84 when he was at forensic under your care, is that correct?

A Yes, sir. He also mentioned that when I saw him on February 4, 1988.

* * *

[RECORD—P. 516] A He was not consistent in the information that he gave me. He went from thinking he did not—from saying he did not do the act to saying that he did it out of anger.

Q Okay, so we can add to that that he's also inconsistent in statements that he gives to you, right?

A Yes, sir, very ambivalent about things.

* * *

[RECORD—P. 518]Q When you examined him on February 4th of this year at my request do you know whether or not Mr. Perry was on medication then?

A Yes, sir, he was on medication, a small amount of medication, but he was not taking it regularly.

Q What type of medication and what dosages?

A Haldol.

* * *

[RECORD—P. 519]A He had a very poor tolerance for medication, he developed a lot of side effects. He became very stiff and he would also have some drooling, some of which he exaggerated himself.

* * *

A On the Haldol.

* * *

[RECORD—P. 520]A He did better after that but then we had problems also with the side effects so we pretty much had to re-adjust his medicine regularly and watch him closely. He also had a problem about wanting to take medication. He really never was interested in taking medication.

* * *

[RECORD—P. 525]BY THE COURT:

Q Now in your letter addressed to me dated March 10th of '88 you say he does understand that he is convicted and also expressed that he does not want to die. So my question is is he aware of the punishment that he has been ordered to suffer and does he understand why he had been ordered to suffer that punishment?

A Yes, sir, he said, uh, when I first went to talk to him he said he was scared to die, he killed his mother because he was angry. And he asked me to help him be able to live.

* * *

A So he does understand that he's convicted of the death

of his family and he does understand that the penalty is death.

Q And does he understand that he is going to suffer that [RECORD—P. 526] penalty because of his actions?

A I think if he knows that he's being—he's dying because he killed his parents, I think he could understand that that's the result—that his death is the result of the actions that he did.

* * *

[RECORD—P. 527] Q In regards to the Haldol with which Mr. Perry was medicated prior to his trial, and as I understand it, since he's been on death row, he has exhibited symptoms that were side effects?

A Yes, sir.

Q Okay. And some of those were what?

A Some of those exist but at times he would exaggerate them.

Q All right. The symptoms would include drooling?

A Yes.

Q Impaired gait or walking?

A Yes.

* * *

[RECORD—P. 528] Q But if a normal person were to take a psychotropic medication may he also exhibit the side effects of drooling and impaired gait?

A Yes, sir.

Q All right. Now you mention that he exaggerated what, his symptoms?

A Yes, sir.

Q And can you explain to me how would he exaggerate those symptoms?

[RECORD—P. 529] A He would—at times he would be able to move and at times he would not move at all. And, in fact, there was a time there when he would stay just in bed because he claimed he couldn't move.

Q All right, now, at what point, is this prior to trial or is this just since he's been on death row?

A We are talking about his stay at the hospital so that would be prior to his trial.

* * *

Q Now how could you determine that these actions of laying in bed were exaggerated? I mean how could you determine he was able to move when he wouldn't move?

A Because it has been reported that at times he would be able to get up and at times he just refused to get up.

* * *

[RECORD—P. 530] Q Your report mentioned the Bennett criteria but the Bennett criteria is not exactly the criteria upon which we are basing today's determination.

A That's true.

Q All right. Now what is important to today's determination are some of the following questions, and please answer them to the best of your ability. Is it not true that Mr. Perry expressed to you he did not wish to die?

A That's true.

Q Is it not true that he understood his sentence, the death penalty?

A Yes, sir.

Q Now when we say he understood his sentence, the death penalty, how were you able to conclude that he understood it? What component of it did he understand? What was it you explained or did he ask questions of you?

A The first thing Mr. Perry said to me when I went to see him was, uh, I asked him if he remembered me and he said he did. And I said, do you know why I am here. And he [RECORD—P. 531] said to me, you are here to help me stay alive, is what he said to me. And I said, why do you say that. And so we started talking about what his present condition and about what he had done that ended up in his incarceration and the penalty that he had. So that's when he first told me that he did not kill the family, that somebody else killed them, in fact, that man that killed them also had taken a shot at him in the head. Then at the later part of the interview that's when he said at the end that he was very angry with his mother and called her all kinds of names. And he said that the little boy was also a bastard and that his sister was insane. He started being derogative towards the family and stated that he did kill them. So he does understand that he killed them and that he is scared to die. So I say yes to those last questions that you asked. My apprehension with him is he does get ambivalent and he knows—he's aware that he is on death row because he's going to die. He's aware that he killed his family and he will tell you he did. But he does get very ambivalent and gets very paranoid and that's a part of his illness.

Q If I understand what you just told me, Dr. Jimenez, is that his ambivalence is what frightens you, that if he were less ambivalent that he might be more cooperative with the court personnel that are trying to save his life?

A That's true.

Q Is there a medication that you're aware of that can eliminate ambivalence in personality?

A No. It's the extent of the ambivalence that we are concerned about. And that is a part of the illness in Schizophrenia so I thought that maybe if he could become [RECORD—P. 532] more stabilized then maybe there will be less ambivalence on his part.

Q How are we to stabilize him when there are no medications that eliminate ambivalence?

A Well, that's the problem.

Q You have medication that you would suggest issuing, offering and having him ingest to eliminate such ambivalence?

A I don't really know that I would be able to eliminate it because it because—but you could probably try him on a bigger medication and give it to him consistently and see then if there would be a change or there would be some improvement. He had improved before.

* * *

[RECORD—P. 533] Q Do we have free will?

A Yes, sir.

Q And can you see my distinction? Is it possible that Michael's ambivalence, as you term it, is more in line with a refusal to cooperate, a refusal to assist, rather than, as you put it, he is unable to assist?

A There is a certain degree of refusal and there's also a [RECORD—P. 534] certain degree of inability. It's very difficult, and that's the reason why I suggested that I would feel more comfortable if this man were better medicated and better, uh, in a better frame of mind than he is now. Although he does understand that he killed his family and he does understand that he is getting the chair for that crime.

Q Okay. And you have made those determinations pursuant to your interview that he understands why he's being penalized why he incurs and is going to suffer the penalty of death?

A Yes, sir, based on my evaluation that's the conclusion I arrived at.

Q Dr. Jimenez, does Mr. Perry have a different diagnosis or prognosis after your February 4th, 1988 interview as opposed to your interviews and observations prior to trial? Have you detected any different symptoms in your February 4th, 1988 interview as opposed to what you observed and saw prior to his trial?

A No, sir.

Q The symptoms appear to be the same? They're consistent from your first consultation or observations through to your most recent?

A Well, I had seen Mr. Perry in a better frame of mind.

Q By frame of mind you mean what? More cooperative? Less hostile?

A Yes. And he was able to participate more in interviews. I haven't seen him for two years until I saw him again.

Q And when you first encountered him after two years did you not testify a moment ago that he recognized you?

A Yes.

Q He remembered you? He knew what significance you had in his life?

[RECORD—P. 535] A Yes, sir.

* * *

Q. And, Dr. Jimenez, am I paraphrasing you correctly, I believe, earlier when you said—or testified in this same courtroom on this same witness stand that Mr. Perry is basically smart enough to act crazy?

A Yes, sir.

* * *

[RECORD—P. 550] DR. COX:

* * *

Q Would you agree that Mr. Perry's diagnosis is that of Schizoaffective Disorder?

A Yes, sir.

Q Is that a disease of illness that is going to leave Mr. Perry

A I don't think so, no, sir.

* * *

Q Have you formulated an opinion as to whether or not Mr. Perry is competent to be executed?

[RECORD—P. 551] A Well, as you and I have discussed before, that's a relative thing. It has to do with the treatment Mr. Perry is receiving. I have seen him at times when I did not feel he was competent to be executed. I have seen him also at times when I thought he was competent to be executed.

Q Is there any way of predicting when he is competent?

A When I saw him the last time which was on the 3rd of March he was on neuroleptic medication. He was about as—he was functioning about as well then as I've ever seen him function. At that time I went through the whole matter with him and he was aware of why he—of where he was, what his sentence was, what he would be executed for and was aware of the fact that he could be executed. He was taking Haldol at that time.

Q Are there other times where you've seen him when he was not competent to be executed?

A I have. The first time I saw him I didn't think he was competent, back in July.

Q And other times since then?

A Yes, sir.

Q Has he ever told you that he is God?

A Yes, sir.

Q And that as God he could not be killed?

A Yes, sir, he told me that.

Q Did he also express in I think October of '87 that he was supernatural and could not be killed and he was CI agent and that he was God?

A Yes, sir.

Q The records from Angola indicate that Michael was floridly psychotic on almost a monthly basis if not more often. [RECORD—P. 552] Does that concur with your. . .

A Would you restate that question? I didn't hear all of it.

Q It was probably not stated in psychiatric language. As I read the records from Angola it appears to me that Mr. Perry is hospitalized quite frequently. Why is that?

A He becomes psychotic and is hospitalized by the staff there so he can be given medication and treatment.

Q When he becomes psychotic is he in contact with reality?

A In my opinion, no, sir.

Q Is he competent to be executed during those periods?

A No, sir.

Q Some of those times are even though he is on medication, isn't that correct?

A Yes, sir, even while on medication it takes them a while to respond and the symptoms persist.

Q Doctor, what is EPS?

A It's a syndrome or side effect caused by neuroleptic medication.

Q It stands for extra-parameatal symptoms or extra-parameatal syndrome.

Q Has Michael exhibited those?

A Yes, sir.

* * *

Q Have you noticed some EPS symptoms though?

[RECORD—P. 553] A Yes.

* * *

Q Would you agree that Michael has a history of Schizoaffective Disorder at least since 1981 or somewhere in there?

A He's been given different labels but he has had the history of psychotic illness dating back that far, yes, sir.

Q And basically has been hospitalized on and off since those dates?

A Yes, sir.

Q Is Schizoaffective Disorder something of which he can be cured?

A No, sir.

Q It's like diabetes, it's always going to be with him to a greater or lesser degree?

A In my opinion, yes. It's something that can be managed like diabetes and sometimes it will be worse and sometimes it will be better but it's going to be there.

Q And there's no way to predict when he will become psychotic even when he's on medication?

A It's hard to predict with a hundred percent accuracy.

Q Doctor, out in the hall you indicated that Michael was, quote, at best a moving target. Would you explain to the Court what you meant by that?

A I have seen him on and off medication several times now and I have seen him respond to medication. When I saw him [RECORD—P. 554] back on the 3rd of March he looked about as good to me then as I've ever seen him look. At that time I thought he probably was competent. He deteriorates quickly when off medication. So his com-

petency status tends to change, it's very labile, it moves about. What I meant by this perhaps offhand remark was that his competency changes frequently and he's not in the same place all the time. And sometimes he's competent and sometimes he's not. That's what I meant by that.

Q So I guess in summary what I've heard you saying is that you've seen him not competent. . .

A Yes, sir.

Q . . .sometimes and you've seen him competent. . .

A Yes, sir.

Q . . .once?

* * *

Q Do you agree with their placing him on that medication?

* * *

[RECORD—P. 555] A That treatment is a rational appropriate treatment for the psychiatric illness that this man has, in my opinion.

Q And does Haldol affect him beneficially?

A Yes, sir, when he takes it in adequate doses it affects him beneficially.

Q What is an adequate dose, in your opinion?

A Thirty milligrams a day, or more.

* * *

[RECORD—P. 556A] Q Even on medications Mr. Perry can decompensate and become psychotic, can he not?

A Yes, sir, it's possible.

* * *

Q Have you ever seen him psychotic when he was on his medication?

A Yes, sir, I've seen him have psychotic symptoms when he was on medication, yes, sir.

Q When he's on medication and when he is in these psychotic—in this psychotic condition was he able then to be competent. . .

A If you're. . .

Q . . .relative to the sentence in this case?

A I've seen him at times when he was having, I thought, psychotic symptoms but he was aware of the fact that he had a sentence of death and that he could be executed and he could be killed by the execution process, yes, sir.

* * *

Q Have you also seen him during this period of time when he indicated that he was God and that he would get up out of the chair?

A He's indicated to me that he was God—this was the first time I saw him—that he was God, that he could not be killed by electrocution, that it would take several hours for the staff to figure this out and it would be a struggle but that he would prevail and he would not be executed.

[RECORD—P. 557] Q And he's also told you that, I believe, when he's been on medication, hasn't he?

A Yes, sir.

* * *

Q Doctor, you've also, I believe, seen him when he's undergone this forced treatment, have you not?

A Yes, sir.

Q And even after the forced treatment and massive doses of Haldol and he's still sometimes floridly psychotic?

A He gets better. In my mind I think I settled the issue, in fact, I know I settled the issue. He does respond to medication when he's given it and he gets better. How good he gets probably does leave something to be desired but he gets better.

Q Better is a relative term, isn't it?

A Yes, sir.

Q I think that's what's troubling me a little bit. Is there any way to qualify that?

A I don't think I've ever seen Michael, even on medication, be completely coherent, well-intergraded, rational. I've always felt in him there's certain areas of psychotic thinking there.

Q Even in the best days?

A Yes, sir, even when I see him on his best days.

[RECORD—P. 558] A Yes, sir.

Q With the massive doses of medication?

A Yes, sir.

* * *

[RECORD—P. 564] Q Now can you offer to the court any analysis or opinion, *** on why Mr. Perry would have malingered while medicated with Haldol, as we discussed the one aspect of psychotic illness within Schizoeffective Disorder?

A Well, I think it's obvious he could have malingered psychotic symptoms at some point to escape prosecution for the crime for which he was charged.

* * *

A When he's taking medication he has indicated to me that he feels better, that it helps him rest better and, to me, he seems to function better. When he does not take the medication certainly there's change in his function. To me, there's **[RECORD—P. 565]** been a very clear relationship between him being compliant with medicine in the clinical picture that I see when I examine him.

Q Have you ever detected him to be malingering whether on or off medication?

A I can't say that I have, no.

* * *

A It's shall we say easy to malinger symptoms. You come in to see me for thirty to forty-five minutes and just sit there for that limited period of time and act crazy.

* * *

[RECORD—P. 566] Q Did he have the capacity to know of the fact of his impending execution?

A Yes, sir, I went into that with him that day specifically as I do most of the time when I see him. He was aware of where he was, he was aware that he was under a sentence of death. He was aware that he could be killed by the electrocution, and he was aware of why he was there.

* * *

Q Did he understand the reason for the death penalty. . .

A Yes, sir.

Q . . .being imposed?

A He did, though at that time he denied his guilt to me for the crime. And he knew why he was there.

* * *

[RECORD—P. 567] A Neuroleptic medications such as Haldol is the name applied to these medications which are given to people for certain psychiatric illnesses, and they basically suppress, control, or improve the symptoms of the illness.

Q And what illness is the specific case Mr. Perry endures?

A He's being given this drug because he has a diagnosis of [RECORD—P. 568] Schizoeffective Disorder.

Q And this neuroleptic drugs will suppress what particular symptoms of Schizoeffective Disorder?

A Makes his thinking become coherent and rational, it makes his delusional beliefs either go away or become much less compelling or controlling. If he's hallucinating it will suppress or cease the hallucinations, will make him less labile and agitated.

* * *

A Thinking more coherently, and more in contact with his environment.

* * *

A I could ask him a question and he can develop an answer and explain an answer to me in a logical fashion, carry out a discussion with me and string together three or four or five thoughts or concepts in a logical sequence that makes sense. When he's not on medication he ram-

bles so that he goes from talking about the hospital to something that happened before he ever came to Angola,

* * *

[RECORD—P.572] Q And on each occasion do you take the opportunity to discuss his charges, his fate, the penalty he faces?

A Yes, sir, I attempt to.

Q Okay. And have you succeeded in bringing up those subjects in each of your visits?

A Sometimes I have and sometimes I haven't. As I indicated the first of March when I saw him I was able to and we had a very good discussion about it. There have been times when I've not been so successful.

Q And why where you prevented from being successful in your discussions with him?

A Because I thought he was—my answer to that is when I was unable to do so he was so out of contact with what was going on that he really wasn't able to answer the questions. He would tell me things like he was God and that he couldn't be killed.

Q And that's a symptom of, in your opinion. . .

A In my opinion, in his case, it's a delusion which is a symptom of his illness.

* * *

[RECORD—P. 574] A T-A-R-D-I-E D-Y-S-K-I-N-E-S-I-A.

* * *

A These are recognized side effects that occur with these drugs when people take them indefinitely. They don't have to do with their psychiatric condition as such,

they don't make them any more disturbed mentally but they impair their motor function.

* * *

A Do I think he has tardive dyskinesia now?

Q Yes.

A No, I do not think he has it now.

Q What would it take for him to become a member of that class of dysfunction?

A There is a hazard if he continues taking these medications indefinitely, say for the next five years or so, [RECORD—P. 575] that he's got a twenty to twenty-five percent risk of developing this complication.

Q And that complication would impair his gait?

A It's characterized by involuntary chewing, smacking, movements of the lips, involuntary movements or tremors of the tongue and tremors of the upper extremities.

Q Is that going to change your opinion on whether or not he understands the penalty he faces?

A No, that has nothing to do with that.

Q How do you suggest, Dr. Cox, that we manage this Schizoeffective Disorder of Mr. Perry?

A The management of it is—I think he has demonstrated it, he responds to treatment and that the treatment of it is one of these psychotropic drugs.

Q Haldol?

A Haldol is being used, has been used and has been effective. That would certainly be appropriate.

* * *

[RECORD—P. 576] Q And how would he react on medication?

A Well, I talked to him last in March and he very matter of factly told me—we went into it, you know, and he told me that, you know, he realized why he was in prison. And he sat there and very calmly denied to me that he had committed the crime. He said, I wasn't there, I was somewhere else, I didn't do it. when I'd seen him off medication he would become very angry, agitated, loud [RECORD—P. 577] yelling, etcetera. That's the difference I've observed.

Q So he can deny it when he's on medication but. . .

A Yes.

Q . . . he just gets hostile when he's off?

A Yes.

* * *

[RECORD—P. 589] DR. CURTIS VINCENT:

A My opinion as of March 5th of this year was that he was not [RECORD—P. 590] competent to be executed at that point.

* * *

[RECORD—P. 593] Q I believe in 1983 your diagnosis was that of Schizoeffective Disorder. Has that changed?

A I believe that the diagnosis stands today, the same diagnosis.

Q Mr. Perry was psychotic when you saw him?

A In March of this year?

Q Yes, sir.

A Yes, he was.

* * *

[RECORD—P. 594] Q Two days after Dr. Cox did and he was floridly psychotic when you saw him and still on medication at that occasion at that point in time. Is that consistent with the illness of Schizoeffective Disorder?

A I'm assuming he was taking medication at that point.

* * *

A The security guard said that he indeed had been taking medication and that the night lieutenant said that he had observed him taking medication. From my many years working in a psychiatric facility there are ways to put it in your mouth and not take it. I don't know that he was indeed taking it at that point. But if indeed he was taking it it's quite possible to be floridly psychotic at one point and yet more rational at other points. And that's not very unusual.

* * *

[RECORD—P. 600] Q Well, did he have organic brain damage?

A I didn't see any evidence of it, no.

* * *

[RECORD—P. 612] A Again, the size is very small. I wasn't getting tremendous cooperation at that point. As you can see, it's a stick figure as opposed to the normal drawing of a person with arms and body and so forth.

* * *

[RECORD—P. 619] Q You mentioned something, doc-

tor, also, about your diagnosis today is the same as it was earlier. To when were you referring?

A I did an evaluation of Mr. Perry in November of 1983 at Feliciana Forensic Facility.

* * *

[RECORD—P. 621] Q In your report back in 1983 it was your recommendation that the treatment team consider psychotropic medication for him. So was it and is it your opinion that if he is placed on medication he does respond fairly quickly?

A Well at that point I had no knowledge whether he would respond quickly or not. Indications were that he would respond because in general people do respond, people who are out of touch with reality do respond to the psychotropic medication to the point where they are back in touch with reality and very often typically become competent to stand trial. I feel he is an intelligent individual and that if reality contact is there he can learn the issues surrounding the charges very quickly.

Q Would Haldol be such a psychotropic medication?

A Yes, it's one of the more common ones.

* * *

[RECORD—P. 623] A I asked him directly what happens if all the doctors go to court to the hearing and the judge finds him competent to proceed, and he indicated at that point that he would be executed. So there was some understanding that if he's found competent to proceed that he would be executed.

* * *

Q He knows what execution is?

A Yes, he expressed some fear of dying in relationship to that.

Q Now in your discussions did he appear to understand the reason that he was going to be executed?

A That's a much more difficult issue. I think he has the understanding that if an individual murders somebody and they can be found guilty and then could be executed legally. I think he understands that. I'm not really convinced that he understands that he did the murders. I think that varies tremendously.

Q Did he acknowledge that he committed these murders to you or did he deny it?

A He did both. At one point he said that he committed the murders. We talked about that briefly. Two minutes later I was asking another question and he said that he felt that **[RECORD—P. 624]** he could be found innocent because he was in Washington, D.C. at the time. I went into that in a little detail as far as witnesses that would provide that testimony. And he said there were a couple of hitch hikers but he doesn't have any idea where they might be, and that the person who checked him in I think on Monday in Washington D.C. could testify as to his whereabouts at that point. It's very inconsistent.

* * *

[RECORD—P. 632] A In this case, I found Mr. Perry to have Schizoeffective **[RECORD—P. 633]** Disorder. I believe that that would be the appropriate diagnosis at that point.

Q On March 5th, '88?

A That's correct.

Q All right. Did you make that diagnosis earlier in 1983 when you saw him?

A Yes, I did.

* * *

[RECORD—P. 637] DR. GLENN ESTES:

* * *

Q What is your opinion as regards to his ability to understand the nature of execution and his ability to understand the finality of execution?

A Well, he failed to show normal abilities in recalling and organizing facts and understanding reasons in various areas which my opinion would be includes the legal areas of concern, his execution, his conviction, his legal rights, ability to cooperate with various authorities at different times. I would presume that those difficulties would arise in various areas. It's my opinion that he was not completely aware of the nature of the proceedings against him even though he was able to acknowledge that he was on death row when I saw him, and at that time he was able to say that they want me dead, but I did not conclude that he understood his sentence, **[RECORD—P. 638]** his punishment for what he did wrong.

Q What about the finality of a death sentence as regards to Michael Owen Perry? Did you reach any opinion as to that?

A Well, he failed to acknowledge that because on some occasions when I was talking to him when I saw him he referred to his eventual release from prison. I'm not sure of what the basis of that was but he referred to it as a future event. And he said things, for example, like, when I get out of here they'll pay for it.

Q Did he ever tell you that he was God?

A Yes, he did.

* * *

[RECORD—P. 639] Q Did you arrive at a diagnosis as to what illness, if any, Mr. Perry has?

A I came to a tentative conclusion that the most likely diagnosis would be Schizoaffective Disorder.

* * *

[RECORD—P. 641] Q Would you agree that his current mental status at the time showed poor contact with reality?

A Yes.

Q And poor judgment and poor understanding and inability to organize facts?

A Yes.

Q In particular with regard to determining alternatives from which to choose?

* * *

A He show poor judgment in many areas, including judgment of alternatives.

* * *

[RECORD—P. 646] Q What treatment course do you recommend to make Mr. Perry competent and sane?

A I don't feel prepared to recommend a course of treatment.

Q Well, hypothesize for me. Would Haldol help?

A Possibly. I'm not certain.

Q Prolixin help?

A It could help in some ways.

Q Hypothesize. Any other medications could help?

* * *

[RECORD—P. 647] Q And what would those neuroleptic psychotropic drugs do that would make him sane and competent? How do they work?

A I don't know that they would make him sane and competent.

* * *

[RECORD—P. 653] Q Give me the symptoms that lead you to your conclusion of his inability to understand the penalty he faces.

A His symptoms include disruptive behavior, physical activity, restlessness, interrupting and ignoring questions, indirectness and irrelevancy in his answers, inconsistency in his explanations, tendency to be disorganized when he presented facts, difficulties in presenting facts in chronological order, variations in the pace of his speech, jumping from one topic to another in his ideas, inappropriate moods, indication of having his thoughts broadcast out loud, in- [RECORD—P. 654] dication of hallucination of voices, saying that he was God, failure to consistently recognize whether or not he was mentally ill, tendency not to acknowledge responsibility or his own role in determining the actions of others toward him.

* * *

[RECORD—P. 661] We will call Mr. Perry as an exhibit.

* * *

[RECORD—P. 662] Q Michael, what's your name, please?

A Perry, Michael Owen, God—I was God when I was seven years old. I remember that. And I'm innocent, I didn't do it.

* * *

Q Who did you marry, Michael?

A Suzanne Annette Bordelon.

Q How old were you?

A Seven.

Q Tell me how you became God?

A Well, it was a strenuous event. That was the worst time of my life. I spent sixty years in the penitentiary.

* * *

[RECORD—P. 663] Q Michael, if they put God in the electric chair what's going to happen?

A You'd kill me dead, I mean in the twenty years that's the last report, you know. I mean I did my ninety percent, you know,but I believe he's God, you know. I mean he knows the man and, uh, I don't like to cry and I told you I wouldn't try to cry but, uh, I mean that's how I made it first, you know. And, uh, I love my wife, you **[RECORD—P. 664]** know, and I don't want to lose her, and I don't want to lose ya'll because ya'll the first ones that helped me. And I didn't do it what ya'll trying to say that I did it. I am crazy, nine percent, I go with that, that's for the money, you know.

* * *

[RECORD—P. 671] Q Do you know that you were brought to trail on that. . .

A Yes, sir, I. . .

Q . . .on those charges?

A . . .know, the Captain Arnold told me that.

Q And you understand that the jury found you guilty? Or do you understand that the jury found you guilty of committing those five murders?

[RECORD—P. 672] A But they want me to pay the price.

Q Do you know that the jury found you guilty of committing those five murders?

A I didn't know that. They told me innocent. They sent to Angola.

* * *

[RECORD—P. 688] THE COURT: Is there any other evidence from the Defense?

MR. NORDYKE: We rest.

[RECORD—P. 689] THE COURT: Any additional evidence from the State other than what you presented by way of cross examination?

MR. SALOMON: Yes, your Honor, there is one thing that concerns me greatly, and I think it's relevant to this proceeding. But the only problem is I haven't had access to this particular document.

THE COURT: If it's in the record you've had access to it.

MR. SALOMON: Well, this particular item was asked to be sealed.

THE COURT: What is that?

MR. SALOMON: This is a March 14th, 1988 letter on Nordyke and Denlinger stationary addressed to the warden of Angola State Penitentiary.

* * *

[RECORD—P. 691] THE COURT: So, again, your request to make it part of the record is denied since it already is a sealed document in the case. Any other evidence from the State?

* * *

19TH JUDICIAL DISTRICT COURT, ETC.

[RECORD—P. 290]

June 7, 1988

The Honorable L.J. Hymel, Judge
19th Judicial District, Division "J"
Governmental Building
222 St. Louis Street
Baton Rouge, Louisiana 70801

RE: Michael Owen Perry
DOC #111850

Your Honor:

Based on our prior conversation and the subsequent *amicus* filed by the Department of Public Safety and Corrections in the Perry case, please accept this information from Louisiana State Penitentiary.

Dr. Kovac, as noted, will be following up with weekly reports and of course would be happy to provide you with any other reports necessary.

Sincerely,

Annette M. Viator
Attorney for the Secretary

[RECORD—P. 291]

Louisiana State Penitentiary
Angola, Louisiana 70712

Hilton Butler
Warden

Ms. Annette Viator
Attorney at Law
La. Department of Corrections
Baton Rouge, La.

Dear Annette:

As per our conversation, I am sending documents pertaining to the mental health of Michael Perry. Although I do not see Michael on a routine basis, it has been my observation and understanding that he functions adequately and appropriately while on medication; it is only after he has been off medication that he begins to decompensate.

If further information is needed, please advise. Weekly reports will be forthcoming.

Sincerely,

/s/ Kay B. Kovac, M.D.
KAY B. KOVAC, M.D.
Medical Director

[RECORD—P. 292]

May 25, 1988

To: Dr. Kay Kovac
Medical Director

From: Marie C. Hughes ACSW, BCSW
Mental Health Team

Re: Michael Perry
DOC 111850

In response to your request of May 24, 1988 I have reviewed the above named and numbered inmate's chart. Annette Viator, attorney at Headquarters, requested the following information as I understand it:

1. What behavior does he manifest when he is taking psychotropic medications?

At the times when Mr. Perry's medical record indicates he is taking psychotropic medications and he appears to be stabilized he is able to function fairly well in his environment. He is calm, cooperative, verbally spontaneous with appropriate answers to questions and interacts with security and his peers in a manner which could be considered fair to average for his population. Delusional conversation is usually omitted unless specific questions are asked. He does not threaten to harm himself or others when he is apparently stabilized on medication.

It should be noted that it is common for inmates at Angola to pretend to take their oral medications and actually do not swallow. The only sure way to tell if someone is taking medications is by injections.

2. What behavior does he manifest when he initially discontinues his psychotropic medications?

One of our consulting psychiatrists explained that the blood serum level of psychotropic remains at an effective level somewhere between three to seven days if the patient was stabilized prior to discontinuation. This of course varies with each individual. Outside stressors will also effect this stabilization.

Aris Cox M.D., a consulting psychiatrist, ordered a period to rest off medication on 11/20/87. His record indicates he was admitted to the hospital on 11/30/87. It was necessary for Mr. Perry to be placed on suicide watch as he was considered a possible threat to himself and others.

[RECORD—P. 293] 3. What is he like when he has been off psychotropic medications for an extended period?

When Mr. Perry has been off psychotropic medications long enough to decompensate he exhibits bizarre behavior, threatens to kill himself and others, states that he is God, and associations are loose. He changes the subject in the middle of a sentence and such delusional matter is spontaneously verbalized.

To my the best of my knowledge his homicidal and suicidal threats have only been verbalized since his arrival at Angola. I have never personally witnessed a suicide gesture or homicidal action nor have I seen any documentation to support the fact that Mr. Perry acts on his threats.

If I can be of further assistance please let me know.

Respectfully,

/s/ Marie C. Hughes ACSW, BCSW
MARIE C. HUGHES ACSW, BCSW
Correctional Clinical Social Worker 2

[RECORD—P. 294]

Louisiana State Penitentiary
Angola Infirmary
Physicians Clinic

Name: Michael Perry; DOC: #111850; Camp: D/R; Job:__; Assign__; B/P:__; Weight:__; Temp:__; Pulse:__; Resp:__;

Date: 4/29/88

Time:__

On this Friday, 4/29/88 at 1:45 pm I received a phone call from attorney Keith Nordyke who represents Mr. Perry. Mr. Nordyke stated he had been told that Perry had begun decompensating. Mr. Nordyke further stated that I had his permission to do whatever was medically necessary. He stated that there was no need to PEC Perry since he (Nordyke) was his guardian and he (Nordyke) was giving his permission to give psychotropic medications to Perry. I told Mr. Nordyke that the mental health worker (Marie Hughes) had told me Perry was making suicidal threats and was disoriented and on that basis I would not allow him to further decompensate to the point of taking his own life. I told Mr. Nordyke that we would offer Perry the medication; however, if he refused, he would be PEC'd if it felt medically indicated. Mr. Nordyke agreed. Joe Kaysa, legal counsel for DEC was notified and agreed, also.

/s/ Kay Kovac, MD
KAY KOVAC, MD

[RECORD—P. 295]

New General Hospital
Louisiana State Penitentiary
Angola, Louisiana
Name: Michael O. Perry; Doc#: 111850

Date of Admission: Death Row

Mental Health Team Progress Notes

Date Notes Must Be Signed

3-25-88 Michael was seen in the emergency room at the request of Dr. Kovac. Michael's affect was within normal limit; his mood was euthymic. He did not appear to be experiencing any anxiety or distress. No decompensation was noted. No delusions were elicited. His speech was relevant and coherent. Associations were tight.

When asked about his medication he said he was not taking it because his lawyers asked him to stop receiving treatment of any kind from the mental health team at Angola. He said he had a sanity hearing coming up and his lawyers thought it would be in his best interest to be free of all mental health treatment. He said he does not believe he is "crazy" but if "they" think he is, he will not get "burned."

I told him that at this point we could not force him to take medication, but when we feel that he is "gravely disabled" we will [RECORD—P. 296] have the authority to force him to take medication. He said that before we force him to take medication he will take it voluntarily. He said he would take it now but he is only following the instructions of his lawyers. We discussed his

well-being and how the medication does help him. He responded by saying that he did not believe the medication does him any good because he does not believe he is "sick.

He then asked me questions about the physical pain involved in being electrocuted. And he said he was not afraid of dying, but he did not to die in the electric chair.

A No problems at this time. No decompensation noted. Michael is not taking his medication and doesn't plan to take it voluntarily unless his lawyers tell him to take it.

P Report interview with Dr. Kovac.

/s/ R. Parat, MSW

[RECORD—P. 297]

3/23/88

Michael Perry
111850

Michael was seen while I was on the tier to see another inmate. He appears to be in fair remission at this time. He was friendly, quiet, and cooperative.

/s/ Marie C. Hughes ACSW/BCSW

[RECORD—P. 287]

NUMBER 9-85-472, SECTION V
19th Judicial District Court
Parish of East Baton Rouge
State of Louisina

[caption omitted in printing]

MOTION TO FILE AMICUS CURIAE BRIEF

NOW INTO COURT, through undersigned counsel, comes the Louisiana Department of Public Safety and Corrections, who moves this Honorable Court to allow the Department of Public Safety and Corrections to file an amicus curiae brief in the above-captioned matter on the following grounds:

I.

The Louisiana Department of Public Safety and Corrections is the sole custodian of persons who have been sentenced to death in this state.

II.

Said department has a special interest in determining what custodial powers they are empowered with in regard to treatment of mentally ill persons who have been sentenced to death.

WHEREFORE, the Department of Public Safety and Corrections moves this Honorable Court for leave to file an Amicus Curiae brief in the above-captioned matter.

Respectfully Submitted,

/s/ ANNETTE M. VIATOR
Annette M. Viator
Staff Attorney
Department of Public Safety and Corrections
Post Office Box 94304
Baton Rouge, Louisiana 70804
(504) 342-6743

[RECORD—P. 288]

19TH JUDICIAL DISTRICT COURT
Parish of East Baton Rouge
State of Louisiana

NUMBER 9-85-472, SECTION V
[caption omitted in printing]

ORDER

Considering the above and foregoing:

It is HEREBY ORDERED that the Department of Public Safety and Corrections be allowed to file an Amicus Curiae Brief in the above-captioned matter.

THUS DONE AND SIGNED this 13th day of June, 1988, at Baton Rouge, Louisiana.

/s/ L.J. HYMEL
JUDGE

19TH JUDICIAL COURT
Parish of East Baton Rouge
State of Louisiana

EXCERPTS FROM TESTIMONY TAKEN AT AUGUST 26, 1988 HEARING

* * *

[RECORD—P. 699] The Defense counsel's objection to this Court reviewing those documents is overruled and the Court will file those documents into the record. And the Court has considered those reports.

* * *

[RECORD—P. 307]

19TH JUDICIAL DISTRICT COURT
Parish of East Baton Rouge
State of Louisiana

[Caption ommitted in printing]

ORDER

This matter came before the Court on August 26, 1988, pursuant to regular assignment for ruling on the defendant's competency to be executed pursuant to verdict of the jury returned herein and subsequent orders of the Louisiana Supreme Court.

For reasons this date orally assigned;

IT IS ORDERED that the weekly reports received by this Court from the Louisiana Department of Public Safety and Corrections relative to current status of the defendant be filed into the record in this case as Court Exhibit #1 in globo and based on said reports it is further ordered that Doctors Aris Cox and Theresita Jimenez are hereby appointed and directed to further examine the defendant relative to his current mental status and appear in this Court on the the 30th day of September, 1988, at 11:00 o'clock a.m. to give their testimony relative to their findings;

IT IS FURTHER ORDERED that the January 21, 1988, ex parte order in re delegation of decision making authority be vacated and set aside;

IT IS FURTHER ORDERED that pursuant to R.S. 15:830.1 the Department of Public Safety and Corrections provide psychiatric treatment and medication as deemed appropriate by the medical staff of said Department to the defendant up to and until September 25, 1988, when a

final determination of this issue will be made by this Court; IT IS FURTHER ORDERED that subpoenas issue to Doctors Cox and Jimenez to appear in Court on September 30, 1988, at 11:00 o'clock a.m. for the taking of their testimony and that copies of this order be mailed to all counsel of record with a copy being served on the defendant.

Judgment rendered August 26, 1988, in Open court at Baton Rouge, Louisiana.

Judgment read and signed this 31st day of August, 1988, in Chambers at Baton Rouge, Louisiana.

L.J. HYMEL, JUDGE

19TH JUDICIAL DISTRICT COURT

Filed: Aug 31, 1988

19TH JUDICIAL DISTRICT COURT
Parish of East Baton Rouge
State of Louisiana

EXCERPTS FROM TESTIMONY TAKEN AT SEPTEMBER 30, 1988 HEARING

DR. KAY KOVAC

[RECORD—P. 717]Q What—when you went and spoke with him that ten or fifteen minutes on the 26th, this past Monday, what did you talk about and what did he say?

A Well, I initially just went back and introduced myself again to him since it had been a long time since I had seen him. And we talked just in general. I asked him how he was feeling and I told him I was—my main reason for coming over was my concern that he was not taking his oral medication. I asked him, you know, how he had been doing in general and he said okay, sleeping a lot. Uh, he did say that occasionally he heard some voices. And I said, well, perhaps if you started taking your medication again that that would help and he said no. And then he went on to say that his attorney had instructed him not to take the medicine. And I said, well, you know, I understand but I think just for your best health we really need to talk about this because I think it's in your best health to take your medicine. And, uh, Mr. Perry said, no, my attorney has told me not to take my medicine. He said, it's just—it's very simple to understand, take my pills and die, don't take my pills and live. And he said, so, I'm not going to take my pills. **[RECORD—P. 718]** So I just—I said, well, you know, you've got an injection that's going to be coming up. And he said, no, I'm not going to take my injections any more either. And I asked him about that and he said that they made his hip burn. And I told him, well, perhaps

we could, you know, talk with one of the psychiatrists and maybe that was not the—we could give him a different medication. And he said, no, my attorney said this is going to go to the supreme court. And he said, I'm just not going to take any—I don't want any injections, I don't want any other medications. And. . .

* * *

A I'm not a psychiatrist and I don't pretend to have any indepth knowledge on what I think would work on Mr. Perry or not.

* * *

[RECORD—P. 724] Q Michael's affect and delusional status can vary from day to day, can it not?

A It depends on—just in my limited experience with Michael, it depends on whether he had taken his medication.

* * *

[RECORD—P. 736] DR. ARIS COX:

Q You examined Mr. Perry again on September 7th of this year.

* * *

[RECORD—P. 737] Q And you were aware of the fact that he had been given an injection of Haldol on September the 3rd of 1988, is that correct?

A Yes, sir.

Q And you saw him four days later on the 7th?

A Yes, sir.

Q As best you can recall, would you explain or tell us exactly what you did and how Mr. Perry appeared and how the conversation went?

A I pretty much had the standard conversation I had with Mr. Perry when I see him. I asked him how he was doing, uh, again went into his circumstances with him, asked him to talk to me about his situation.

Q What do you mean by circumstances and situation?

A His awareness—well, number one, how he's doing, day to day how he's feeling, what's going on with him, etcetera. I specifically asked him—I was told the weekend before I saw him, he had been upset and I had to go to the hospital for an emergency injection of medication. I questioned him about that. I then talked with him about his understanding of his position on death row, why he was there and the implications of his situation. Basically, I found that Mr. Perry was worse than he had been the last time I saw him. He indicated to me he had been having hallucinations, voices, as he described it, **[RECORD—P. 738]** over the weekend which had bothered him and that caused him to create too outbursts that led to him going to the hospital. I noticed several times during the interview when discussing his situation, his possible execution, the crimes for which he was convicted, he burst into periods of laughter which would interrupt our conversation. And I'd wait for him to compose himself and then he would start talking again. His thought processes were disorganized. He indicated to me that he was still hallucinating. My conclusion was that he was getting worse, even on the medication. And I suggested to the staff that the dosage of medication would have to be increased. It was my impression, however, that he was aware of the fact that he was under a sentence of death, that the process of elec-

trocution could kill him and that he was aware of why he was on death row. As far as the issue of being able to participate meaningfully in legal proceedings, testify, help an attorney, make rational decisions, basically the Bennett criteria as outlined in the Louisiana Supreme Court decision, I did not feel he was competent under those standards for legal participation.

* * *

[RECORD—P. 740] Q Dr. Cox, you have seen Mr. Perry on occasions prior to this where he was on medication, is that not correct?

A Yes, sir.

Q And on those—on some of those occasions isn't it a fair statement that he was not competent to be executed on those, at those times?

A I have seen him, yes, sir, when he indicated that he did not feel that the electrocution process could kill him.

Q And the prior testimony that you gave at the April, 1988 hearing concerning Mr. Perry being a, quote, moving target, close quote. . .

A Yes, sir.

Q . . . is still viable in your opinion today?

A Yes, I do, I believe that.

* * *

[RECORD—P. 742] Q What's the effect for the period of effectiveness for a short-term?

A Eight to ten hours at the most.

Q And your examination was approximately how many hours after the short-term medication?

A I saw him on the 7th and this was the weekend before. I saw him on a Wednesday and it was on a Saturday or Sunday when this was given him.

Q And to your knowledge was there any other short-acting or other oral medications he received between the 3rd of September and the 7th of September?

A He is supposed to be on oral Haldol daily in addition to the long-acting medicine he is given. The records indicate that he was refusing that. And, to me, there is always an issue of compliance or question about compliance with prisoners on death row when they're given oral medication.

Q And speaking of the oral medication, Dr. Cox, I understand from his medical information available at the hospital that he was to have a standing order of sorts for IM medication with Haldol?

A The long-acting Haldol he was to receive two cc's every month on around the 10th of the month, the 10th or 11th, or something, every month, once a month. That medicine is given once a month.

Q And do you know what precipitated that standing order or upon whose order that was?

A I think it was ordered by Dr. Abase who is not a consulting—Abade, rather, a consulting psychiatrist at Angola, who evaluated Mr. Perry and ordered this medication.

[RECORD—P. 743] Q Now this two milligrams or two cc's. . .

A Two cc's, yes, sir.

Q Two cc's of Haldol which is what we call the long-lasting medication, what is long lasting? What's the period?

A This medicine can be given every month and given that way it will produce a circulating blood level, a therapeutic blood level that will last a month if the proper dosage is given. This drug people can take it monthly and get effective treatment from it if the dosage is proper.

Q Okay. And you mentioned blood level, and I'd like to follow up by asking once you get a long-lasting injection of Haldol-D how long does it take for you to reach a plateau of sorts where you may, to use my terminology in layman words, stabilized?

A Three months with that drug.

Q And why is it, Dr. Cox, that we have in Mr. Perry's case oral medications which are assigned to supplement apparently this intramuscular injection he receives?

A I don't believe he's been on an intramuscular for three months. And even if he has it's obvious he's not on enough medication, so he needs the supplement to control his symptoms.

Q Okay. Why do you give a supplement on a daily through orals as well as the monthly injection?

A Well, that's standard procedure with this medication that when you begin a person on Haldol long-acting for the first three months its accepted procedure to use a supplement of oral medication until the patient does reach a plateau after three months at which point they [RECORD—P. 744] can be maintained on the long-acting only. It's in the prescribing information with the medicine.

Q That would be the Physician's Desk Reference?

A Um-hum.

Q Now what would happen if, assuming that you take your IM injections for the three month period that you don't supplement it with the orals on a daily basis?

A The person would stay ill longer, be harder to control their symptoms, they would remain psychotic longer.

Q Now is there a way to stabilize a patient through injections only where you have a patient that's unable to ingest medication through the oral means?

A It's difficult. It would mean probably having to give the patient the medication not only in long-acting injectable form but short-acting injectable form, also.

Q That would be short-acting when they manifest the symptoms?

A Yes, or daily, you know, we have written protocols to treat people with IM medication if they refuse if by mouth, two or three injections a day.

[RECORD—P. 745] A I directly asked him if electrocution would kill him and he said yes, he knew it would. I asked him if he understood that he was under a sentence of death, if that was his understanding and he said yes.

* * *

Q The last time you were in this court, Dr. Cox, your testimony was that he does respond to medication when he is on it.

A Yes, sir.

Q Your opinion is still the same on that?

A Yes, sir.

Q When he's on medication he's competent and when he's not on medication he's not competent. Is that still your opinion?

A That's basically it, sir.

Q Let me ask you some questions to maybe educate me a little bit in this area. This Haldol that's being or has been given by way of injection and by use of some type of oral medication, this is what's called an antipsychotic drug, is that correct?

A Yes, sir, that's correct.

Q Are there any other type of lesser controversial drugs, such as, tranquillizers or sedatives that would enhance or assist Mr. Perry in maintaining competency?

A No, sir, I believe that he needs to remain on the class of drugs known as antipsychotic drugs. That's specific class in pharmacology.

[RECORD—P. 746] Q Now in the literature in cases I've come across I've seen that there are two common side effects of antipsychotic medications, those being, and I may be pronouncing this wrong, akinesia. . .

A Yes, sir.

Q . . .and akathisia.

* * *

Q Now the akinesia had the effect of making a person, according to the cases I've read, apathetic and unemotional?

* * *

Q Have you seen any side effects of Mr. Perry. . .

* * *

Q . . .in that way?

A I have never seen Mr. Perry have side effects.

Q The second side effect, akathisis, that supposedly makes a person agitated and restless?

* * *

Q Have you seen him have any of those effects from the medication?

A It's hard to say. In my opinion, no.

* * *

19TH JUDICIAL DISTRICT COURT
Parish of East Baton Rouge
State of Louisiana

EXCERPTS FROM TESTIMONY TAKEN AT OCTOBER 21, 1988 HEARING

* * *

DR. JIMENEZ:

[RECORD—P. 753] A I talked to him regarding his —the reason why he's incarcerated, and what possible— what, what is the conviction that he had. And he was able to indicate to me that he was there because he was convicted of first degree murder of five people and that he was going to be executed because of this.

Q Now, were you aware of the fact that he had had an injection of, ah, what I'll call, ah, the long-term, long-affecting Haldol on September 3rd?

A Yes, sir, I did. He received Haldol Decanoate 2 CC IM September the 3rd, 1988. He had been sporadically taking his medication. Apparently, after that, the Haldol by mouth, but three days before I saw him he had completely refused to take his medication by mouth.

Q Now, my notes indicate that he was given oral short-term Haldol on September 11th, which would have been two days before your September 13th examination, do your notes reflect that?

A What I have, sir, is that Haldol ten milligrams, refusing very often, took once in three days; that would be pretty close, what you have.

Q And at the time that you saw him on September 13th, was he psychotic?

A No, sir. He was pretty stable, based on my examination and evaluation.

Q All right. Let's move on to September 26th, did your examination take place in the same area [RECORD —P. 754] of the prison?

A Yes, sir. The same place, and I asked him the same questions, and he told me that I've asked those questions several other times in the past. And, again, I told him again that I still needed to hear him repeat to me what he's there for and what he thinks is going to happen to him, and he was able to do so.

Q Was he psychotic on September 26th, in your opinion?

A No, sir, he was not.

Q And at that time, his last medication injection would still have been September 3rd, is that correct?

A That's right, sir.

Q And at that time, on September 26th, did he understand that he was facing the death penalty?

A Yes, sir. He said: Five counts of murder, I already told you that. That penalty, electric chair for first degree murder.

Q Did you have a discussion with him about whether or not he was going to take his medication or not?

A Yes, sir. He said that he was told by his lawyer not to take his medicine, the judge wants me to take the medicine so I could be executed. My lawyers, ah, you have you said you have, ah, my lawyers said you have a famous case here, it might go to the U.S. Supreme Court, is what he said.

* * *

[RECORD—P. 755] Q In fact, Haldol-D is a long-lasting psychotropic?

A That's true, sir. The effect usually lasts from three-to-four weeks.

* * *

[RECORD—P. 758] Q And could you describe for us his orientation on both of those days of interviews?

A He was aware of where he was at. He was aware that it was the month of September. And he didn't exactly know the date, but he was aware that it's September and 1988. He talked about things that he had seen. I asked him what—how he usually spent his time, and sometimes, he said, lying in bed sometimes, or sometimes he watched the t.v. show, and he talk about having seen a program about Charles Manson, and he was—he voiced some concerns about the picture and his opinions about that show.

Q Did he indicate, what show it was he was watching?

A It was about a show by *Geraldo*, and it was on Charles Manson, and he was questioning the fact as to why Charles Manson had people killed, or killed some people, and he was not being executed and why, why he, who only killed five people should be executed.

* * *

[RECORD—P. 759] Q Do you recall on—did he express to you any wishes or information on how he felt concerning his penalty of death that he faces?

[RECORD—P. 760] A He told me that when first he was told that he was going to die, he said, well, I'm going to die, I'm going to die, but he told me that as the time come closer, he starts feeling scared. In fact, he said: I'm

scared, scared to die. And he, during my last visit had—I expressed to him how I feel about having to go there so often to evaluate him, I said: It's not really a pleasure coming here talking to you all the time and asking you these things. And he said: Don't feel bad about it, you're just doing your job. And he said that he does not think about dying because it drives him crazy to think about, about about.

* * *

[RECORD—P. 761] THE COURT: Does the Defense have any other evidence?

MR. NORDYKE: Your Honor, this was not a hearing—
[RECORD—P. 762] THE COURT: I understand. My question is: Do you wish to present any evidence?

MR. NORDYKE: No.

THE COURT: I want to give you the opportunity.

MR. NORDYKE: No, Your Honor.

THE COURT: Does the State have any evidence?

MR. SOLOMAN: No, sir, Your Honor, we do not.

* * *

19TH JUDICIAL DISTRICT COURT
Parish of East Baton Rouge
State of Louisiana

ORAL REASONS FOR JUDGMENT
FROM THE 19TH JUDICIAL DISTRICT COURT
OCTOBER 21, 1988

* * *

[RECORD—P. 766] BY THE COURT:

Michael Owen Perry was indicted on five counts of first degree murder. After a change of venue, he was tried here in the Nineteenth Judicial District Court, Parish of East Baton Rouge, and the jury unanimously concluded the defendant was guilty as charged on all five counts.

After completion of the sentencing-portion of the trial, that same jury unanimously recommended defendant to be sentenced to death on each count.

It is not necessary to go through the facts of the case at this time, because they are succinctly stated by the Louisiana Supreme Court in *State versus Perry*, 502 So. 2nd, 543, Louisiana Supreme Court, 1986, at Page 546 and 547.

As early as 1897, the Louisiana Supreme Court has held that ". . . one who has committed a capital offense and becomes non compos mentis after conviction, he shall not be executed." *State ex rel Paine versus Potts*, 22 So. 738 (La. 1897).

[RECORD—P. 767] In *State versus Allen*, 14 So. 2nd, 870, Louisiana Supreme Court, 1943, the Supreme Court of Louisiana reaffirmed that one who has been convicted of a capital crime and sentenced to suffer the penalty of death and who, thereafter, becomes insane cannot be put to death while in that condition.

At Page 563 and 564 of the *Perry* decision itself, our current Louisiana Supreme Court stated that the State of Louisiana will not execute one who has become insane subsequent to the conviction of a capital crime. The Court then directed counsel for the defendant to apply to this court for appointment of a sanity commission to make a determination as to whether or not this defendant is competent for execution.

This proposition attained constitutional status in *Ford versus Wainwright*, 106 Supreme Court, 2595, 1986. In that case, the United States Supreme Court held that ". . . the Eighth Amendment prohibits a state from carrying out a sentence of death upon a prisoner who is insane."

In *Ford versus Wainwright* the court never made a determination as to the competency of the defendant to be executed. Instead, the Court dealt with the Florida statutory scheme which specifically provided for the situation where a prisoner that has been given the death penalty becomes insane or incompetent. The Court ruled that the procedures set forth in the Florida scheme were constitutionally **[RECORD—P. 768]** deficient under the 14th Amendment to the United States Constitution. The *Ford* court suggests many constitutional boundaries for procedures to be used in determining a person's sanity or competency, yet, no guidance was offered as to the constitutional limits or what standard is to be applied in making the ultimate determination.

An excellent discussion of *Ford versus Wainwright* is contained in Volume 47 of the *Louisiana Law Review* at Pages 1351 through 1364.

As stated by Justice Powell in his concurring opinion in *Ford versus Wainwright*, there are two issues for determination: Number one, the meaning of insanity in the

context of competency for execution, and; number two, the procedures to be followed. As stated by Justice Powell, the goal is to require that those who are executed know the fact of their impending execution and the reason for it. Such a standard appropriately defines the kind of mental deficiency that should trigger the Eighth Amendment prohibition. If the defendant perceives the connection between his crime and his punishment, the retributive goal of the criminal law is satisfied. And only if the defendant is aware that his death is approaching can he prepare himself for his passing. Accordingly, Justice Powell would hold that the Eighth Amendment forbids the execution only of those who are unaware of the punishment they are about to suffer and why they are to suffer it.

[RECORD—P. 769] In *Lowenfield versus Butler*, 843 Fd. 2nd, 183, Fifth Circuit, April 12, 1988, the United States Court of Appeal for the Fifth Circuit relied heavily upon Justice Powell's concurring opinion, as set forth in the *Ford* case. Justice Powell's concurring opinion, as stated in the *Lowenfield* case, is the most recent and possibly only statement on the status of Louisiana law in this area, since Lowenfield was a Louisiana prisoner. The ultimate issue of Lowenfield's competency to be executed was not decided by the Fifth Circuit because the court held that Lowenfield failed to make a substantial threshold showing that he could produce evidence that his mental infirmities were so severe as to meet the standard to trigger the hearing process.

As the *Paine*, *Allen* and *Ford* cases illustrate, the fact that this right exists is not in dispute in these proceedings. The issues arise as a result of the fact that there appears to be no articulable standard by which to judge the competency of a person to be executed under Louisiana law. In the *Ford* decision, the United States Supreme Court noted in a footnote that twenty-six states have statutes explicitly requiring the suspension of the execution of a prisoner who meets the legal test of incompetence. Louisiana has no such express statute. Instead, Louisiana's ban against execution of the incompetent has become law by judicial decision.

Under Louisiana criminal law—digressing for a moment—Under Louisiana criminal law, we have **[RECORD—P. 770]** three types of mental incapacities: First, there is "insanity". Article 14 of the Criminal Code provides that if the circumstances indicate that because of a mental disease or mental defect the offender was incapable of distinguishing between right and wrong with reference to the conduct in question, the offender shall be exempt from the criminal responsibility. This statutory mental incapacity originated from English common-law and jurisprudence; namely, the *McNaughten* case.

The second type of mental incapacity deals with a person's competency to stand trial. This incapacity is set up by statute in Article 641 of the Code of Criminal Procedure, which provides that mental incapacity to proceed exists when, as a result of mental disease or defect, a defendant presently lacks the capacity to understand the proceedings against him or to assist in his defense. Subsequent articles of the Code of Criminal Procedure then provide for the manner in which the incapacity is raised, orders for mental examinations, appointment of sanity commissions, reports of sanity commissions and the determination of mental capacity to proceed. Again, however, these statutes are supported and further refined by our jurisprudence; namely, the Louisiana Supreme Court case of *State versus Bennett*, 345 So. 2nd, 1129, Louisiana Supreme Court, 1977, wherein all the criteria are listed

there for determination of a defendant's mental capacity to proceed in a criminal prosecution.

[RECORD—P. 771] The third type of mental incapacity is now before this Court; that is, the mental capacity to proceed to execution.

Since there is no express statement by the Legislature on this subject, it appears that it will be necessary to fashion a standard through analogy with Louisiana's existing statutes and state and federal jurisprudence. This analogy will necessarily take us into the procedural scheme that should be utilized in determining the competency of an individual for execution.

In the *Allen* case, decided by the Supreme Court of Louisiana on November 8th, 1943, we are referred there to the applicable statutes. In referring to Article 267 of the Code of Criminal Procedure, which was Act 136 of 1932, which is the predecessor of our current Code of Criminal Procedure, Article 641, the Code said that that Article of the Code relates to mental capacity and proceedings before or during trial and before conviction and prescribes the rule to be followed by the trial judge to determine the defendant's mental condition. The Court then makes the following statement: It said nothing about the proceedings to be followed in a case where a person becomes insane after conviction and sentence. But, for the same reason that a person is entitled to a hearing before conviction on the question of his sanity, he is entitled to a hearing after conviction; *and the same rules of procedure govern.*—And I emphasize the words, "and the same rules of **[RECORD—P. 772]** procedure govern".

At Page 564 of the *Perry* decision itself, the current Louisiana Supreme Court again refers us to the articles of the Code of Criminal Procedure by stating that" . . . the

allegation of mental incapacity may be raided by the court or the prosecutor. And, therein, the Supreme Court cited Article 642 of the Louisiana Code of Criminal Procedure.

Therefore, procedurally, it appears we are governed by the Code of Criminal Procedure, and, therefore, do have a set of statutes to work with.

Article 641 of the Code of Criminal Procedure provides that the defendant must suffer from a mental disease or defect in order to raise his sanity or competency. Article 642 allows defense counsel, the district attorney or the court to raise the issue. After the issue is raised, or I should say: After the issue was raised in this case, this Court appointed doctors to serve on a sanity commission, and they were ordered to examine the defendant, have done so, have made their reports and have been called to testify relative to their findings. Article 647 provides that the issue of the defendant's mental capacity is ultimately a determination to be made by the court in a contradictory hearing. This determination is being made by this Court today.

Should this Court determine that the defendant is **[RECORD—P. 773]** competent for execution, by whatever tests this Court deems to be applicable, then the proceedings shall resume and the case shall proceed to the next step, which is the scheduling of an execution date.

However, if this Court determines today that the defendant lacks the mental capacity to proceed, by whatever tests this Court deems appropriate, the proceedings shall be suspended and the Court shall commit the defendant to the custody of the Department of Health and Human Resources for custody, care and *treatment*—and I emphasize and underline the word "treatment"—as long as the lack of capacity continues. In this particular case,

the defendant would be maintained in custody at the Forensic Unit at the Feliciana Forensic Facility, in accordance with Article 648 of the Code of Criminal Procedure.

Article 649 then provides that if the review panel, as set forth in Article 648, at anytime thereafter recommends that the defendant presently has the mental capacity to proceed, the Court shall hold a contradictory hearing within thirty days on that issue, and if ruled competent, the case shall then proceed to the next step. I should mention that Article 649 has been amended by Act 383 of 1988, and, essentially, that new Act replaces the review panel with the superintendent of the facility. But, substantively, there's no change in the law, just that change in the procedure.

[RECORD—P. 774] Article 649.1 of the Code provides that when a person is returned to the committing Court from an institution and the institution deems it necessary that the patient receive *prescribed medication*,—and, again, here, I underline and emphasize the words "prescribed medication"—it shall be the duty of the chief administrative officer of the Parish Jail to make such medication available to the person until such time as the Coroner, or other physician, finds that the medication or it's prescribed dosage is no longer necessary. As such, it is obvious from these statutes that a criminal defendant can be maintained medically for purposes of competency.

"Is a defendant whose mental capacity is maintained only through the use of a prescribed medication competent to stand trial?" *State versus Hampton*, 218 So. 2nd, 311, Louisiana Supreme Court, 1969. In the *Hampton* case, the defendant was suffering from chronic paranoid schizophrenia. At the sanity hearing, the two members of the commission reported that the defendant was legally

sane and that she could understand the proceedings and assist in her defense. They attributed her improved condition to the use of a psychotropic tranquilizing drug known as "Thorazine". One psychiatrist testified that her psychotic symptoms were in remission, but if the dosage was discontinued, she would probably relapse. It was the consensus of medical opinion that the defendant was legally sane due to the medication, or I should say "legally competent" due to the medication. In approving of competency **[RECORD—P. 775]** maintained through the use of prescribed medication, the Louisiana Supreme Court made the following observation, and I quote:

> ". . . that this condition has resulted from the use of a prescribed tranquilizing medication is of no legal consequence. Under the codal test, the court looks to the condition only. It does not look beyond existing competency and erase improvement produced by medical science. . "

In *State versus Plaisance*, 210 So. 2nd, 323, 1968, the defense argued that if it were not for sedatives that the defendant was taking, he would not be able to stand trial, and that his state of remission was due only to the influence of said drugs. Medical evidence at the trial indicated that the defendant was only able to understand the proceedings against him and assist in his defense because of the continued use of the prescribed medication. The Louisiana Supreme Court went on to hold that the defendant was competent to stand trial even though he was taking tranquilizers at the time.

In *State versus Kaysen*, 464 So. 2nd, 793, Louisiana Appeal Fifth Circuit, 1985, the defendant there argued that he was prejudiced by being forced to proceed with trial despite the fact he had been prescribed and administered a certain drug while in prison prior to trial. The

Fifth Circuit held that the effect of the drug was actually to help the defendant to understand the proceedings and to assist counsel in his own defense, and, therefore, [RECORD—P. 776] the trial judge did not abuse his discretion in denying the defendant's motion for mistrial on the theory that the defendant in a drugged-state was not competent to stand trial.

The case of the tranquilized defendant is discussed at 28 Louisiana Law Review, 265, 1968; I realize that this is an old Law Review article, but I feel that some of the comments from it are pertinent to the court's inquiry today. In this Law Review note, the writer discusses the nature and effect of psychotropic drugs. The antipsychotic drugs belong to a group called "Phenothiazines" of which Thorazine and Compazine are the most common. These drugs can reduce hallucinations, delusions and other abnormalities in the mentally ill. They do not otherwise effect cortex; that is, the "thinking" part of the brain. The mental clarity or consciousness of the person remains unchanged. In effect, these drugs cause a remission of the psychosis; if the drugs are discontinued, this latent psychosis will return. This language from the Law Review article appears throughout the literature that this Court has read, and appears throughout the medical testimony presented in this case. As stated by the writer in the Law Review article, whether it is the state or the defendant who seeks to avoid trial, the legal issue is the same.

As to the nature of chemotherapy, Dr. F. H. Metz, Clinical Director of the Forensic Division at the East Louisiana State Hospital in 1986 (sic), he [RECORD—P. 777] describes the effect of tranquilizing drugs at Page 268 of the Law Review article, as follows, and I quote:

> ". . . I believe it is highly significant that the courts and the district attorney and all concerned should

> recognize that tranquilizers are antipsychotic or anti-anxiety medication . . . are not drugs in the sense that they drug or cloud the consciousness or senses of an individual, and that they are not habit-forming or addictive and are not classed as sedatives like the barbiturates, and they are not classed as narcotics. Certainly, the district attorney will want to note this and thus may prevent the possibility of an accused or convicted defendant seeking relief . . . on the grounds that he was drugged or doped or sedated at the time of his earlier hearing or trial."

The author then concludes that the fact that the defendant is taking medication should not preclude his trial. The objective application of the medically maintained defendant will enable the state to proceed against the defendant who is seeking to avoid or postpone his trial, and will not prevent the defendant who wants to stand trial from becoming the "forgotten man" of the law.

In summary, Louisiana statutes and cases both hold that competency to stand trial can be achieved through the use of treatment and medication.

The next issue then is if a person is found to be incompetent for execution, by whatever tests is deemed appropriate by this Court, can medication be used to achieve competency in this area?

[RECORD—P. 778] There are a number of recent federal cases dealing with the use of psychotropic drugs:

In *Rennie versus Klein*, 653 Fd. 2nd, 836, 3rd Circuit, 1981, the federal court there held that ". . mental patients —and in this case, it involves mental patients, as opposed to defendants in criminal proceedings, the case holds that . . "mental patients who are committed involuntarily to state institutions nevertheless retain a constitutional right to refuse antipsychotic drugs that may have perma-

nently disabling side effects. The state may override that right when the patient is a danger to himself or others, but in non-emergency situations, must first provide procedural due process." In this case, Rennie was admitted after an involuntary commitment proceeding was had, and he was diagnosed as a paranoid schizophrenic. This civil litigation focused exclusively on motions for preliminary injunctions with respect to the right to refuse treatment. At Page 843 of the decision, the Court states that the physical effects that antipsychotic drugs might have sets forth the physical effects that antipsychotic drugs might have on an individual. And at this point, I do want to note that Dr. Cox's testimony, which was taken on September 30th, indicated to this Court that Mr. Perry has not suffered from any of these side effects because of his taking the Haldol. The Court went on to hold that the protection of liberty embodied in the due process [RECORD—P. 779] clause of the 14th Amendment includes a right to refuse administration of antipsychotic drugs. The State may compel such medication in the face of a patient's refusal to accept it only by demonstrating either that the medication is necessary to prevent a danger to the patient or to others in the community, or that the patient does not have the mental capacity to determine for himself his course of treatment. The majority opinion also added to this constitutional measurement considerations of "least restrictive treatment" and risk of side effects. In a concurring opinion by Circuit Judge Garth, he disagreed with the majority as to these last two considerations. In his opinion, he felt those last two considerations, that is, least restrictive treatment and risk of side effects were irrelevant considerations.

The next case reviewed by this Court was *Osgood versus District of Columbia*, 567 Fd. Sup. 1026, the U.S.

District Court, District of Columbia, 1983. In that case, a former jail inmate brought suit under the Civil Rights Statute as a result of her being forcibly injected with a psychotropic drug against her own will. In this particular case, the plaintiff objected to the medication on the basis of her Christian Science beliefs. During the entirety of her jail-stay, her refusal to submit to medication was honored except for one afternoon on June 4, 1980, where she was forcibly injected with Haldol against her will because of actions of the defendant which the doctors considered a medical emergency. She was then administered an injection of five milligrams [RECORD—P. 780] of Haldol upon order of the jail doctor. Finding factual disputes, which negated the previous summary judgment order, the case was remanded for resolution of issues of fact. The Court made the following observations, and I quote:

"A compelling state interest will justify actions of the type at issue in the instant case that infringe constitutional rights only where there is no reasonable alternative action that is less instructive upon those rights."

". . plaintiff's rights under the free exercise and due process clause to refuse drug therapy are not absolute."

". . clear interests, either on the part of the society as a whole or at least in relation to a third party would justify overriding a plaintiff's right under the free exercise clause. ."

". . absent some interest on behalf of society or a third party, the state police power cannot be invoked to impose a program of drug therapy on a person, when to do so would violate that person's free exercise rights. ."

"Plaintiff's rights under the due process clause to refuse treatment, likewise, are not absolute."

In *Ake versus Oklahoma*, 105 Supreme Court 1087, 1985, the U.S. Supreme Court dealt with the issue as to whether or not the Constitution requires that an indigent defendant have access to psychiatric examination and assistance necessary to prepare an effective defense based on his mental condition, when his sanity at the time of the offense is seriously in question. The Court answered this in the affirmative. In this decision, the U.S. Supreme Court appears to approve the trial of a [RECORD—P. 781] defendant whose competence is maintained through the use of antipsychotic drugs. At a competency hearing, the Court heard medical testimony that Mr. Ake was psychotic and that his diagnosis was that of paranoid schizophrenia-chronic with exacerbation. The Court then found him to be mentally ill and ordered him committed to the state mental hospital. Six weeks later, the chief forensic psychiatrist informed the Court that Mr. Ake had become competent to stand trial and was receiving two hundred (200) milligrams of Thorazine three times daily, and the psychiatrist indicated that if Mr. Ake continued to receive that dosage, his condition would remain stable. Again, this testimony is similar to the testimony that I've heard presented by Dr. Cox and Dr. Jimenez and the other doctors that were called to testify. The state then resumed proceedings against Mr. Ake after the Court found him to be competent for trial. Although Ake's death sentence and conviction were reversed, the reversal was based on the trial court's failure to appoint a psychiatrist to assist the defendant on the issue of his sanity at the time of the commission of the offense.

In *United States versus Charters*, 829 Fd. 2nd 479, 4th Circuit, 1987, Charters appealed a district court order permitting medical personnel at a federal correctional

institution to medicate him with antipsychotic drugs over his objection. Charters had been found incompetent to stand trial and was ordered confined to federal custody, and upon the [RECORD—P. 782] government's motion, the district court decided to permit forcible medication after weighing Charters interest in liberty and privacy against the interest of the government. The Fourth Circuit Court of Appeal reversed that holding.

At Page 484 of the decision, the court makes the following comment:

> ". . we then turn to the question of forcible medication. We conclude that a mentally ill *pretrial*—and I emphasize and underline the work "pretrial"— . . we conclude that a mentally ill pretrial detainee has a constitutionally protected interest in deciding for himself whether to accept or forego medical treatment."

The court then stated that we must balance the particular interest of the individual and the governmental interest implicated by the case before us. The Court recognizes that the right to refuse medical treatment has been specifically recognized as a subject of constitutional protection.

The following quotations are pertinent for our review here today:

> ". . the threat to the government's interest in safety and security must be manifest. Therefore, unless it is determined that, without medication, a patient presents an immediate threat of violence that cannot be avoided through the use of less restrictive alternatives, there is no justification for the intrusion into fundamental liberties that forcible medication presents . . . Less restrictive alternatives such as segregation or the use of less controversial drugs, like tranquilizers [RECORD—P. 783] or sedatives,

should be ruled out before resorting to antipsychotic drugs.—In this case, Dr. Cox testified that in his opinion there were no lesser controversial drugs that would be of benefit to the Defendant Perry in this case— . . The existence of the less intrusive alternative, forcible medication of Charters, cannot at present be justified based on the need to prevent violence."

The *Charters'* Court then went on to say that:

". . It is questionable that the government's interest in having a fair trial would be realized by trying a heavily medicated defendant.—Again, this is not a consideration in this case, since we are not concerned with a trial at this point— . . The government's interest—going on from the Charters' case— . . The government's interest is in a fair trial in which the accused's guilt or innocence is correctly determined . . . Two common side effects of antipsychotic medication are Akinesia and Akathisia. The first makes the defendant apathetic and unemotional. The second makes him agitated and restless. As a result, the jury may be misled by the demeanor of a defendant who appears to, to care about the crime (or the victim) or who appears overly anxious at particular moments."—Again, as I've said, this is not a consideration in the case before this court today.

The *Charters'* Court then discusses rules and guidelines relative to a medically competent patient versus a medically incompetent patient. The Court states that the lower court should evaluate whether Charters has followed a rational process in deciding to refuse antipsychotic medication and can give rational reasons for the choice he has made. Should Charters refuse antipsychotic medication because he believes that the risk of the side effects and the possibility of permanent injury outweigh the possible benefits of that medication to him, it will be [RECORD—P. 784] difficult for him to be found incompe-

tent by virtue of that judgment. However, if he refused medication out of a denial that he suffers from schizophrenia, or out of a belief that the drugs will have effects that no rational person could believe them to have, then perhaps he would be medically incompetent.

At Page 499 of the *Charters'* decision, the Court then says:

". . We limit our ruling to the case presently before us. It is possible to envision circumstances different from those here, in which the government's interest would be sufficiently compelling to override a patients decision to refuse treatment.

Then, in Footnote 30, the Court says:

"We address only the circumstances of the unconvicted defendant and express no views concerning the rights of convicted prisoners facing forcible treatment with antipsychotic drugs."

From the *Paine*, *Allen*, *Perry* and *Ford* decisions, it is unequivocable that one who has been convicted of a capital crime and sentenced to suffer the penalty of death and who thereafter becomes "insane" or "incompetent" cannot be put to death while in that condition. The manner in which the issue is raised in Louisiana is governed by Code of Criminal Procedure, Articles 641-and following.

The test for competency for execution in Louisiana [RECORD—P. 785] appears to come from the *Ford* and *Lowenfield* decisions, which set forth a two-pronged test for competency for execution. Under this test, which this Court hearby adopts, the State is prohibited from executing those who are unaware of the punishment they are about to suffer and why they are to suffer it.

At the hearing held in this matter some months ago, Drs. Jimenez, Cox, Vincent and Estes were called to

testify, having previously been appointed by this Court to serve as members of the Sanity Commission.

It was Dr. Jimenez's opinion at that previous hearing that Mr. Perry understands what he is convicted of and the penalty he is to suffer and the reason for it. She testified that he understands he killed his family members, and he additionally understands that he does not want to die for that offense. He indicated to Dr. Jimenez that she was there to help him stay alive.

Dr. Cox felt that on March 3rd, 1988, when he last saw Mr. Perry, before that hearing, he was competent to be executed, but at that time he was on prescribed medication, the antipsychotic drug, "Haldol".

It should be noted that Drs. Jimenez and Cox have served on previous sanity commissions involving **[RECORD—P. 786]** Mr. Perry, and, therefore, have benefit of prior examinations, his history, etc. As such, this Court gives their testimony more weight than the other doctors who were called as witnesses and who were getting involved in this matter for the first time.

All doctors that testified agree that Mr. Perry is suffering from a disorder known as "Schizoaffective Disorder". As Dr. Cox stated in his testimony, this disorder is always there; there is no cure for it. Additionally, it is hard to predict when he will be affected or not affected. Dr. Cox did state, however, that the defendant does respond affirmatively to medication when he is on it.

Dr. Cox reiterated that on March 3rd, 1988, while on Haldol, the defendant was competent to know the fact of his impending execution and the reason for it. Also, on March 3, 1988, he was of the opinion that the defendant was legally sane; that is, he knew the difference between right and wrong. In summary, Dr. Cox's testimony at that

time was that when Mr. Perry is on medication he's competent; when he is not on medication, he is not competent.

Dr. Curtis Vincent, pursuant to a ninety-minute interview with the defendant, concluded that the defendant was psychotic in March, 1988, and was not competent for execution. Dr. Vincent further suggested that treatment should include medication. **[RECORD—P. 787]** He indicated that the defendant understands the fact of his impending execution, but the more serious question in his mind is whether the defendant understands the reason for it. It is quite obvious that the defendant does not want to die, according to Dr. Vincent.

Dr. Glen Estes was called as a witness and also diagnosed the defendant as suffering from "Schizoaffective Disorder", and that symptoms will show indefinitely. Dr. Estes would offer or suggest no treatment program for the defendant. Dr. Estes has only seen the defendant on that one occasion, that was on March 9, 1988, and at the time of the interview, he did not know whether or not the defendant was on medication or not.

The continuation of this hearing was had on September 30th, 1988. At that time, Dr. Kay Kovak was called as a witness, and Dr. Cox was called as a witness again. Dr. Kovak, of course, is the Medical Director at Angola. And she indicated that she spoke with the defendant on September 26th, 1988, approximately four days before the hearing. This was a ten to fifteen minute conversation relative to the defendant's refusal to take oral medication. I'm not going to go through her testimony relative to the conversation that she had with him, but according to her testimony, the defendant had been sleeping a lot, appeared to be doing okay, although, he was hearing voices. He also indicated to her that his attorney told him

not to take the medication, and he [RECORD—P. 788] said he wasn't going to take the injection. On September 29th, 1988, she visited the defendant again briefly. At that time, he appeared coherent. He did not appear delusional. Again, he indicated he would not take the medication. On cross-examination, Dr. Kovak indicated that the condition of the defendant varies from day-to-day, depending on whether he is on his medication. On cross-examination by Mr. Solomon, she indicated that when the defendant does not take his medication, he goes into psychotic episode. When he is on medication, it's her opinion he is competent. According to Dr. Kovac, this is the statement the defendant made to her. Perhaps it sums up the entirety of all these hearings and all of this law and all of this testimony. According to her, he said: It's very simple. If I take the pills, I die. If I don't take the pills, I'll live.

Dr. Cox was next called as a witness on September 30th. It was his opinion that the Haldol dosages needed to be increased. It's his opinion that under the *State versus Bennett* criteria, the defendant is not competent. It's his opinion, further, that the defendant is competent for execution if maintained on Haldol. It's Dr. Cox's opinion that the defendant should be on a daily oral medication and a monthly long-term injection. It's his feelings and his belief that the defendant would be stabilized after three months of such medication.

[RECORD—P. 789] Called today as a witness, Dr. Jimenez—and it appears that her statement today is essentially in line with the testimony that she gave at the previous hearing—that is, that he understands what he is convicted of and the penalty he is to suffer and the reason for it. It's her statement that he understands he killed

those family members and he doesn't want to die because of it.

From the testimony adduced, and from the *Ford* and *Lowenfield* tests, it is obvious to this Court that the defendant is competent for execution. It is further obvious from the testimony that he is competent only while maintained on psychotropic medication in the form of Haldol.

Therefore, do the rights of this defendant to refuse this medication, thereby making himself incompetent, outweigh the rights of the State to administer medication for purposes of maintaining the competency of the defendant for purposes of execution?

The federal cases previously cited list various considerations for the Court to consider in making this ultimate determination.

In the *Rennie* decision, the Court stated that the State may override the right of a mental patient to refuse antipsychotic drugs when the patient is a danger to himself or others, but must provide [RECORD—P. 790] him with procedural due process. It's obvious in this case that this defendant has been provided with procedural due process. In the *Rennie* case, the Court was dealing, however, with a mental patient who had been committed involuntarily to a state institution. The court was not confronted with a person in Mr. Perry's legal position today.

In this *Osgood* case, the Court there again stated that a compelling state interest will justify actions of forcible use of Haldol where there is no reasonable alternative action that is less intrusive upon those rights. Again, that court states that the right to refuse medication under the free exercise and due process clause are not absolute. And, again, it's Dr. Cox's testimony in this case that there is no

reasonable alternative action available to achieve competency of the defendant.

In the *Ake* decision, the U.S. Supreme Court appears to approve the trial of a defendant whose competency was maintained through the use of antipsychotic drugs. The drug used there was Thorazine, and the medical testimony indicated that if Mr. Ake continued to receive that medication, his condition would remain stable.

In the *Charters* case, the Court stated that there are instances that can be envisioned in which the government's interest would be sufficiently compelling to override a patient's decision to refuse treatment. **[RECORD —P. 791]** The Court then distinguished the circumstances of the unconvicted defendant versus the convicted prisoner facing forcible treatment with antipsychotic drugs, and expressed no views on the latter.

The citizens of the State of Louisiana through their Legislature have enacted the death penalty for certain crimes. The citizens of Louisiana heard this case through the jury.

Mr. Perry is no longer a person surrounded with the veil of the presumption of innocence. He has been found guilty by a jury of his peers and has been sentenced by them accordingly to suffer the ultimate punishment.

And it is felt by this Court that Louisiana's interest in the execution of that jury's verdict override those rights of Mr. Perry. The State is entitled to have that judgment made executory. To allow Mr. Perry to have the authority to make this decision and to refuse treatment and thereby become incompetent would allow total usurption of the criminal laws in this area, which were enacted by State Legislature.

For these reasons, it is ordered that the defendant, Michael Owen Perry, is mentally competent for purposes of execution, and that he is aware of the punishment he is about to suffer, and he is aware of the reason that he is to suffer said punishment. **[RECORD—P. 792]** Since the defendant's competency is achieved through the use of antitropic or antipsychotic drugs, including Haldol, it is further ordered that the Louisiana Department of Public Safety and Corrections is to maintain the defendant on this medication as to be prescribed by the medical staff of said Department, and, if necessary, to administer said medication forcibly to defendant and over his objection.

Judgment is hereby signed accordingly.

MR. NORDYKE: Your Honor, I respectfully object to the ruling of the court, and, of course, would like the Court to note that the stay is still in effect, as I understand it, on the forcible medication issue.

THE COURT: I'm not certain if the stay is in effect or not. I'm not certain if it was in effect until the date of this hearing or not. But, in any event, I will grant a stay order —

MR. NORDYKE: Thank you.

THE COURT: —if you so request it.

* * *

[RECORD—P.318]

19TH JUDICIAL DISTRICT COURT
Parish of East Baton Rouge
State of Louisiana

NUMBER 9-85-472, SECTION V
[Caption ommitted in printing]

ORDER

This matter came before the court this date pursuant to regular assignment on defendant's request for a competency hearing for determination as to whether or not he possesses sufficient mental capacity to proceed to execution. Present in Court for the State of Louisiana was Rene Salomon, Assistant Attorney General, the defendant, Michael Owen Perry and his counsel, Keith Nordyke, June Delinger and Joe Giarrusso, Jr.

After considering the evidence adduced in the form of written reports and documents filed herein and the oral testimony of the witnesses presented, for oral reasons this date assigned:

IT IS ORDERED that the defendant, Michael Owen Perry, is mentally competent for purposes of execution in that he is aware of the punishment he is about to suffer and he is aware of the reason that he is to suffer said punishment.

IT IS FURTHER ORDERED that defendant's competency is achieved through the use of antitropic and antipsychotic drugs including Haldol and the Louisiana Department of Public Safety and Corrections is further ordered to maintain the defendant on the above medication as to be prescribed by the medical staff of said

Department and if necessary to administer said medication forcibly to defendant and over his objection.

JUDGMENT READ, RENDERED AND SIGNED in Open Court at Baton Rouge, Louisiana, on this 21st day of October, 1988.

/s/ L.J Hymel, Judge
L.J. HYMEL, JUDGE
19th Judicial District Court
Parish of East Baton Rouge
State of Louisiana

Filed: Oct 21, 1988

THE SUPREME COURT OF THE STATE OF LOUISIANA

No. 88-KD-2239

STATE OF LOUISIANA
v.
Michael Owen Perry

IN RE: Perry, Michael Owen;—Defendant(s); Applying for Supervisory/Remedial Writs; Parish of East Baton Rouge 19th Judicial District Court Div. "J" Number 9-85-472

May 12, 1989

Denied.

WFM

JCW

HTL

LFC

DIXON, C.J., CALOGERO & DENNIS, JJ., would grant the writ.

Supreme Court of Louisiana
May 12, 1989

/s/_____
Clerk of Court
For the Court

THE SUPREME COURT OF THE STATE OF LOUISIANA

No. 88-KD-2239 and
No. 89-KA-0159

STATE OF LOUISIANA
v.
MICHAEL OWEN PERRY

IN RE: Michael Owen Perry, applying for Rehearing of this Court's Order of May 12, 1989; 19th Judicial District Court, Parish of E. Baton Rouge, Division "J", No. 9-85-472.

June 16, 1989

Rehearing denied.

WFM

JCW

HTL

LFC

DIXON, C.J., CALOGERO & DENNIS, JJ., would grant.

Supreme Court of Louisiana
June 16, 1989

/s/_____
Clerk of Court
For the Court

Supreme Court of the United States

No. 89-5120

MICHAEL OWEN PERRY,

Petitioner

v.

LOUISIANA

ON PETITION FOR WRIT OF CERTIORARI
to the Supreme Court of Louisiana.

ON CONSIDERATION
of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that this motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

March 5, 1990